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March 22, 2005

Via Hand Delivery

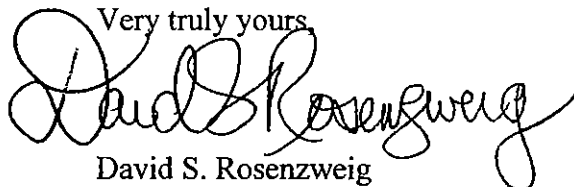
Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: Commonwealth Electric Company d/b/a NSTAR Electric, D.T.E 05-1

Dear Ms. Cottrell:

Enclosed herewith for filing are the responses of Commonwealth Electric Company d/b/a NSTAR Electric to the first set of discovery filed by the Department of Telecommunications in the above-referenced proceeding.

Thank you for your attention to this matter.

Very truly yours,

David S. Rosenzweig

Enclosures


cc: Selma Urman, Hearing Officer
Amy Barad, Siting Division
William Febiger, Siting Division
Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

_____)	
Petition of Commonwealth Electric Company)	
d/b/a NSTAR Electric for Approval of a)	D.T.E. 05-1
Transmission Line in the Town of Barnstable)	
Pursuant to G.L. c. 164, § 72)	
_____)	

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing documents upon the service list in the above-docketed proceeding in accordance with the requirements of 220 C.M.R. 1.05.


Erika J. Hafner Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, MA 02110
(617) 951-1400

Dated: March 22, 2005

Information Request DTE-1-1

Is the Company required to file an Environmental Notification Form with MEPA for this project? If so, please provide a copy when available.

Response

The project does not meet any of the MEPA thresholds for the filing of an Environmental Notification Form. See 301 C.M.R. 11.03.

Information Request DTE-1-2

Please refer to page 4 of NSTAR-KFM-1. Please provide a copy of the Barnstable Zoning Ordinances and indicate which sections describe the Wellhead Protection Overlay ("WPO") and Groundwater Protection Overlay ("GPO") Districts and any restrictions that apply therein.

Response

The Zoning Ordinances of the Town of Barnstable and the Groundwater Protection Overlay District Map are provided as Attachments DTE-1-2(a) and DTE-1-2(b), respectively. Section 240-35, entitled "Groundwater Protection Overlay Districts," sets forth the zoning restrictions in Groundwater Protection ("GP") Overlay Districts and Well Protection ("WP") Overlay Districts.

Parts of the project are located in both a GP and a WP overlay district. Permitted uses in a GP district include anything allowed by underlying zoning except certain specified prohibited uses. These prohibitions include uses such as: landfills, junk yards, underground storage tanks, storage of heating fuels, sewage treatment plants, road salt storage, chemical laboratories, dry-cleaning services and storage of liquid petroleum products. See Section 240-35(F). Regulation of WP overlay districts is more restrictive and prohibited uses include anything already prohibited in a GP district as well as: parking or storage of transport vehicles for fuel, parking or storage of transport vehicles for toxic and/or hazardous substances and any use that uses, generates or stores toxic or hazardous substances, totaling at any one time, more than 50 gallons liquid volume or 25 pounds dry volume. See Section 240-35(G).

Because the project is an allowed use in the Industrial District in which it is located and NSTAR Electric's proposed use does not implicate any of the uses prohibited in the GP or WP overlay districts, the Company believes that no additional restrictions apply to the project.

Chapter 240

ZONING

ARTICLE I Introduction

- § 240-1. Title.
- § 240-2. Purpose.
- § 240-3. Interpretation.
- § 240-4. Severability.

ARTICLE II General Provisions

- § 240-5. Establishment of districts.
- § 240-6. Zoning Map.
- § 240-7. Application of district regulations.
- § 240-8. Exempt uses.
- § 240-9. Temporary uses.
- § 240-10. Prohibited uses.

ARTICLE III District Regulations

- § 240-11. RB, RD-1 and RF-2 Residential Districts.
- § 240-12. RB-1 Residential District.
- § 240-13. RC, RD, RF-1 and RG Residential Districts.
- § 240-14. RC-1 and RF Residential Districts.
- § 240-15. RC-2 Residential District.
- § 240-16. RAH Residential District.
- § 240-17. Open space residential development.
- § 240-18. PR Professional Residential District.
- § 240-19. OR Office Residential District

- § 240-20. O-1, O-2 and O-3 Office Districts.
- § 240-21. B, BA and UB Business Districts.
- § 240-22. BL-B Business District.
- § 240-23. MB-A1, MB-A2 and MB-B Business Districts.
- § 240-24. VB-A and VB-B Business Districts.
- § 240-25. HB Business District.
- § 240-26. HO Highway Office.
- § 240-27. S&D Service and Distribution District.
- § 240-28. SD-1 Service and Distribution District.
- § 240-29. MA-1 Business District.
- § 240-30. MA-2 Business District.
- § 240-31. B-1 Business District.
- § 240-32. IND Limited Industrial District.
- § 240-33. IND Industrial District.
- § 240-34. Flood area provisions.
- § 240-35. Groundwater Protection Overlay Districts.
- § 240-36. RPOD Resource Protection Overlay District.
- § 240-37. Dock and Pier Overlay District.
- § 240-38. Medical Services Overlay District.
- § 240-39. Shopping Center Redevelopment Overlay District.
- § 240-40. Adult Use Overlay District.

BARNSTABLE CODE

ARTICLE IV Supplemental Provisions

- § 240-41. Vision clearance on corner lots.
- § 240-42. Planning Board standards/certain subdivisions.

ARTICLE V Accessory Uses

- § 240-43. Incidental and subordinate nature of accessory uses.
- § 240-44. Accessory uses permitted with special permit.
- § 240-45. Off-street storage of trailers.
- § 240-46. Home occupation.
- § 240-47. Shared elderly housing.

ARTICLE VI Off-Street Parking Regulations

- § 240-48. Purpose.
- § 240-49. Applicability.
- § 240-50. Computation.
- § 240-51. Location of parking spaces.
- § 240-52. Design and screening standards.
- § 240-53. Landscape requirements for parking lots.
- § 240-54. Location of parking lot in relationship to buildings.
- § 240-55. Conflicting provisions.
- § 240-56. Schedule of Off-Street Parking Requirements.
- § 240-57. Circumstances warranting reduction of requirements.
- § 240-58. Reduction of parking within the MA-1 and MA-2 Business Districts.

ARTICLE VII Sign Regulations

- § 240-59. Statement of intent.
- § 240-60. Definitions.
- § 240-61. Prohibited signs.
- § 240-62. Determination of area of a sign.
- § 240-63. Signs in residential districts.
- § 240-64. Signs in PR Professional Residential District.
- § 240-65. Signs in B, BA, UB, HB, HO, S&D and SD-1 Districts.
- § 240-66. Signs in industrial districts.
- § 240-67. Signs in VB-A, and VB-B Districts.
- § 240-68. Signs in MB-A1, MB-A2, MB-B and BL-B Districts.
- § 240-69. Gasoline station signs.
- § 240-70. Shopping center signs.
- § 240-71. Signs in MA-1, MA-2 and OR Districts.
- § 240-72. Signs in B-1, O-1, O-2 and O-3 Districts.
- § 240-73. Construction signs.
- § 240-74. Temporary signs.
- § 240-75. Directional or safety signs.
- § 240-76. Business area signs.
- § 240-77. Movie houses and places of entertainment.
- § 240-78. Illumination.
- § 240-79. Signs in Old King's Highway Historic District.
- § 240-80. Relocating or changing signs.
- § 240-81. Transfer of permits prohibited.
- § 240-82. Protection of subsequent purchasers.
- § 240-83. Illegal signs.

ZONING

- § 240-84. Abandoned signs.**
- § 240-85. Permit required; identification stickers.**
- § 240-86. Violations and penalties.**
- § 240-87. Safety and maintenance.**
- § 240-88. Appeals.**
- § 240-89. Enforcement.**

ARTICLE VIII Nonconformities

- § 240-90. Intent.**
- § 240-91. Nonconforming lot.**
- § 240-92. Nonconforming buildings or structures used as single- and two-family residences.**
- § 240-93. Nonconforming buildings or structures not used as single- or two-family dwellings.**
- § 240-94. Nonconforming use.**
- § 240-95. Reestablishment of damaged or destroyed nonconforming use, building or structure.**
- § 240-96. Variance situations.**
- § 240-97. Abandonment; nonuse.**

ARTICLE IX Site Plan Review

- § 240-98. Findings.**
- § 240-99. Purposes.**
- § 240-100. Scope of application.**
- § 240-101. Site plan approval required.**
- § 240-102. Contents of site plan.**
- § 240-103. Site development standards.**
- § 240-104. Minimum parking lot design standards.**
- § 240-105. Required procedures for site plan review.**

ARTICLE X Personal Wireless Communication

- § 240-106. Purpose and intent.**
- § 240-107. Requirements for all personal wireless facilities in all zoning districts.**
- § 240-108. Antennas permitted by special permit in all zoning districts.**
- § 240-109. Antennas permitted as of right in all zoning district.**

ARTICLE XI Growth Management

- § 240-110. Authority.**
- § 240-111. Purposes.**
- § 240-112. Definitions.**
- § 240-113. Effective date and applicability.**
- § 240-114. Rate of residential development.**
- § 240-115. Issuance of residential building permits.**
- § 240-116. Exemptions.**
- § 240-117. Hardship procedure.**
- § 240-118. Determination of buildability.**
- § 240-119. Violations and penalties.**
- § 240-120. Review of provisions.**
- § 240-121. Scope and validity.**
- § 240-122. Severability.**

ARTICLE XII Administration and Enforcement

- § 240-123. Enforcement; violations and penalties.**
- § 240-124. Bonds and permits.**
- § 240-125. Zoning Board of Appeals.**
- § 240-126. Variance provisions.**

ARTICLE XIII
Amendment; Definitions; Moratorium

§ 240-127. Zoning amendment procedures

§ 240-128. Definitions.

§ 240-129. Hyannis Downtown 500 Block
Moratorium Zone.

Zoning Map Revisions

Parking Diagrams

[HISTORY: Adopted by the Town of Barnstable 4-7-1987 STM by Art. 4; readopted 9-27-1990 by Order No. 90-65' (Art. III of Ch. III of the General Ordinances, as updated through 4-10-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Affordable housing — See Ch. 9.

Building construction — See Ch. 51.

Hazardous materials — See Chs. 108 and 381.

Historic properties — See Ch. 112.

Outdoor businesses — See Ch. 141.

Signs — See Ch. 192.

Wetlands protection — See Ch. 237.

Food establishments — See Ch. 322.

On-site sewage disposal systems — See Ch. 360.

Wells — See Ch. 397.

Marinas — See Ch. 405.

Junk dealers — See Ch. 502.

Subdivision Rules and Regulations — See Ch. 801.

ARTICLE I
Introduction

§ 240-1. Title.

This chapter shall be known and may be referred to as the "Zoning Ordinance of the Town of Barnstable, Massachusetts."

§ 240-2. Purpose.

The purpose of this chapter is to promote the health, safety, convenience, morals and general welfare of the inhabitants of the Town of Barnstable, to protect and conserve the value of the property within the Town, to increase the amenities of the Town, and to secure safety from seasonal or periodic flooding, fire, congestion or confusion, all in accord with the General Laws, Chapter 40A, as amended. For this purpose, the height, number of stories, size of buildings and structures, size and width of lots, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, marine business, industry, agriculture, residence or other purposes are regulated within the Town of Barnstable as hereinafter provided.

1. Editor's Note: The readoption of the Zoning Ordinance on 9-27-1990 was its conversion from bylaw adopted by the former Town Meeting to an ordinance adopted by the present Town Council. The amendment dates noted in the text of the chapter include amendments to the original bylaw.

§ 240-3. Interpretation.

The provisions of this chapter shall be held to be the minimum requirements for the promotion of the purposes herein stated, and shall be interpreted and applied in accordance with the following:

- A. Overlapping/contradictory regulations. Except as otherwise provided herein, this chapter shall not interfere with or annul any other ordinance, rule, regulation or permit, provided that, unless specifically excepted, where this chapter is more stringent, it shall control.
- B. Cumulative provisions. The provisions of this chapter shall be construed as a continuation thereof and not as new enactments.

§ 240-4. Severability.

The provisions of this chapter are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this chapter. If any court of competent jurisdiction shall invalidate the application of any provision of this chapter to a particular case, such invalidation shall not affect the application of said provision to any other case within the Town.

**ARTICLE II
General Provisions**

§ 240-5. Establishment of districts. [Amended 7-15-1999; 10-26-2000; 2-1-2001 ²]

In order to carry out the purpose of this chapter, the following districts are hereby established:

Residential Districts

RB	Residence B District
RB-1	Residence B-1 District
RC	Residence C District
RC-1	Residence C-1 District
RC-2	Residence C-2 District
RD	Residence D District
RD-1	Residence D-1 District
RF	Residence F District
RF-1	Residence F-1 District
RF-2	Residence F-2 District
RG	Residence G District
RAH	Residence AH District

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

Office Districts

PR	Professional Residential District
HO	Highway Office District
OR	Office District
O-1, O-2 and O-3	Office Districts

Commercial Districts

B	Business District
BA	Business A District
BL-B	Business Limited B District
MB-A1	Marine Business A1 District
MB-A2	Marine Business A2 District
MB-B	Marine Business B District
VB-A	Village Business A District
VB-B	Village Business B District
HB	Highway Business District
UB	Urban Business District
S&D	Service and Distribution District
SD-1	Service and Distribution District
B-1	Business District
MA-2	Business District
MA-1	Business District

Industrial Districts

IND LIMITED	Industrial Limited District
IND	Industrial District

Overlay Districts

GP	Groundwater Protection Overlay District
AP	Aquifer Protection Overlay District
WP	Well Protection Overlay District
	Shopping Center Redevelopment Overlay District
	Adult Use Overlay District
RPOD	Resource Protection Overlay District
DOD	Dock and Pier Overlay District
	Medical Services Overlay District

§ 240-6. Zoning Map.

The Town of Barnstable is hereby divided into districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this chapter.

- A. Identification of Zoning Map. The official Zoning Map shall be identified by the title "ZONING MAP OF BARNSTABLE, MASS. DATED September 1, 1998", which is on file in the office of the Town Clerk as amended.
- B. Location of Zoning Map. The Official Zoning Map shall be on file with the Town Clerk.
- C. Zoning district boundaries.
 - (1) The scale of the Zoning Map and the figures entered thereon are to serve as guides in locating the zoning district boundaries shown on the Zoning Map.
 - (2) Where a street divides two zoning districts, the districts shall be deemed to abut each other.
 - (3) Where the boundary line between zoning districts divides any lot existing at the time such line is adopted, which has street frontage in the less restricted area, a use authorized on the less restricted portion of such lot may be extended into the more restricted portion for a distance of not more than 30 feet. This subsection shall not apply to the following districts: HO Highway Office District; Groundwater Protection Overlay Districts; Adult Use Overlay District; Shopping Center Redevelopment Overlay District; MA-2 Business District; OR Office Residential District; and O-1, O-2, O-3 Office Districts. [Amended 9-17-1998 by Order No. 99-012; 6-28-2001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-37, 2001-038 and 2001-039]

§ 240-7. Application of district regulations.

Regulations within each district established herein shall be applied uniformly to each class or kind of structure or use.

- A. Conformance to use regulations. No building shall be erected or altered and no building or premises shall be used for any purpose except in conformity with all of the regulations herein specified for the district in which it is located.
- B. Conformance to bulk and yard regulations. No building shall be erected or altered to exceed the height or bulk, or to have narrower or smaller yards or other open spaces than herein required, or in any other manner contrary to the provisions of this chapter.
- C. Lot size requirements. Wetlands shall not be included in the lot area (square feet) requirement for zoning compliance.
- D. Lot shape factor/residential districts. To meet the minimum area requirements in residential districts, a lot must be a closed plot of land having a definite area and perimeter and having a shape factor not exceeding the numerical value of 22, except that

a lot may have a shape factor exceeding 22 if the proposed building site is located on a portion of a lot that itself meets the minimum lot area requirement and has a shape factor not exceeding 22, and such lots shall not be created to a depth greater than two lots from the principal way.

- E. Contiguous upland required. In addition to the requirements of Subsection C herein, all lots shall have 100% of the minimum required lot area as contiguous upland.
- F. Number of buildings allowed per lot.
 - (1) Residential districts: Unless otherwise specifically provided for herein, within residential districts, only one principal permitted building shall be located on a single lot.
 - (2) All other districts: In all other districts, any number of buildings may be located on a single lot; provided, however, that all regulations for the district in which such buildings are located are complied with, including percentage lot coverage if applicable.
- G. Setbacks from wetlands/great ponds. In addition to the setbacks established hereinafter, the following shall also apply:
 - (1) All construction, with the exception of elevated stairways, decks, driveways, fences and water-dependent structures such as piers and marina facilities, shall be set back a minimum of 35 feet from wetlands.
 - (2) All construction shall be set back a minimum of 50 feet from mean high water on any great pond, except that in residential districts, all buildings except boathouses shall be set back a minimum of 50 feet from mean high water on any great pond.
- H. In any residential district a one-family dwelling and its accessory buildings may be erected on any lot which complies with the applicable provisions of Chapter 40A of the General Laws.
- I. Gross floor area requirements. Gross floor area shall be used in all determinations related to this chapter. **[Added 10-7-1993 by Order No. 94-016]**

§ 240-8. Exempt uses. [Amended 10-7-1999 by Order No. 99-160A]

- A. The following uses and structures are permitted in all zoning districts:
 - (1) Municipal and water supply uses.
 - (2) Municipal recreation use, including recreational activities conducted on Town-owned land under the terms of a lease approved by Town Council. In the case of such a lease, any improvements or changes to such Town-owned land shall be subject to the review of a committee of five residents appointed by the Town Manager or Town Council, at least two of whom shall be from the precinct in which the land is located.

- (3) The use of land or structures exempt from the use provisions of this chapter pursuant to MGL Ch. 40A, § 3, and any other statute.
 - (a) Where such exempt uses are subject to reasonable regulation of bulk, density and parking regulations by MGL Ch. 40A, § 3, reasonable regulation shall be deemed to be: the bulk regulations of the zoning district, except that church steeples may be permitted up to 75 feet in height; Article VI, Off-Street Parking Regulations; and Article IX, Site Plan Review.
 - (b) Where the proposed use does not comply with Subsection A(3)(a) above, the Zoning Board of Appeals shall by a modification permit, modify the bulk regulations of the zoning district and/or the parking requirements of Article VI, Off-Street Parking Regulations, where such regulation would substantially diminish or detract from the usefulness of a proposed development, or impair the character of the development so as to affect its intended use, provided that the modification of the bulk regulations and/or parking requirements will not create a public safety hazard along the adjacent roadways and will not create a nuisance to other, surrounding properties such that it will impair the use of these properties.
 - (c) A modification permit shall be subject to the same procedural requirements as a special permit, except that approval of the modification permit shall require a majority of the members of the Board.
- (4) Agriculture, horticulture, viticulture, aquaculture and/or floriculture on a parcel of land five acres or less in size shall be permitted subject to the following requirements in residential districts:
 - (a) Seasonal garden stands for the sale of seasonal fruits, flowers and vegetables shall be permitted, only for the sale of produce grown on the premises.
 - (b) No person shall be employed on the premises.
 - (c) No more than one temporary, on-premises sign may be erected, not to exceed two square feet, to be removed during the off season.
- B. Any structure for agricultural, horticulture, viticulture, aquaculture and/or floriculture use shall conform to the setbacks of the zoning district, or a minimum of 25 feet, whichever is greater, except that the keeping of horses in a residential district shall be in compliance with the requirements of that zoning district.

§ 240-9. Temporary uses.

The following temporary uses are permitted in all zoning districts:

- A. Temporary occupancy of a trailer during construction of a permanent home; provided, however, a special permit is first obtained from the Zoning Board of Appeals.
- B. Temporary occupancy of a trailer for living purposes by nonpaying guests for a period not exceeding 20 days in any calendar year; provided, however, that the owner of land

upon which the trailer is to be located first obtains a permit from the Building Commissioner.

- C. Temporary occupancy of a trailer as a construction office incidental to development of or construction on the premises on which the trailer is to be located; provided, however, that a permit is first obtained from the Building Commissioner.
- D. Tents. **[Added 2-22-1996 by Order No. 95-194]**
- (1) Maintenance and occupancy of tents in an organized and supervised recreational camp subject to compliance with the rules of the Barnstable Board of Health; provided, however, that a special permit is first obtained from the Zoning Board of Appeals.
 - (2) A tent may be put in place on a lot used for residential purposes, for not more than 10 days, in connection with special family occasions or events, but not to be used for any commercial purposes.
 - (3) A tent may be put in place for not more than 10 days, not more than twice in any calendar year, in connection with a fund-raising or special event by a public institution or nonprofit agency.
 - (4) Subject to annual approval by the Building Commissioner, a tent may be erected and used as a temporary accessory structure to an existing permanent business only during the period beginning May 1 until October 31. The tent shall conform to all the parking requirements and bulk or dimensional requirements of this chapter.

§ 240-10. Prohibited uses.

The following uses are prohibited in all zoning districts:

- A. Any use which is injurious, noxious or offensive by reason of the emission of odor, fumes, dust, smoke, vibration, noise, lighting or other cause.
- B. A tent maintained or occupied for living or business purposes, except as permitted in § 240-9D above. **[Amended 2-22-1996 by Order No. 95-194]**
- C. A trailer parked, stored or occupied for living or business purposes, except as specifically provided for in § 240-9 herein.
- D. Hotels and motels in Precincts 1, 2, 4, 6, and 7 as existing on November 9, 1983, except in the IND Limited and IND Industrial Districts.

ARTICLE III District Regulations

§ 240-11. RB, RD-1 and RF-2 Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RB, RD-1 and RF-2 Districts:

- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RB, RD-1 and RF-2 Districts:
- (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. **[Amended 11-7-1987 by Art. 12]**
 - (2) Keeping, stabling and maintenance of horses subject to the following:
 - (a) Horses are not kept for economic gain.
 - (b) A minimum of 21,780 square feet of lot area is provided, except that an additional 10,890 square feet of lot area for each horse in excess of two shall be provided.
 - (c) All state and local health regulations are complied with.
 - (d) Adequate fencing is installed and maintained to contain the horses within the property, except that the use of barbed wire is prohibited.
 - (e) All structures, including riding rings and fences to contain horses, conform to 50% of the setback requirements of the district in which located.
 - (f) No temporary buildings, tents, trailers or packing crates are used.
 - (g) The area is landscaped to harmonize with the character of the neighborhood.
 - (h) The land is maintained so as not to create a nuisance.
 - (i) No outside artificial lighting is used beyond that normally used in residential districts.
- C. Conditional uses. The following uses are permitted as conditional uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
 - (2) Public or private regulation golf courses subject to the following:
 - (a) A minimum length of 1,000 yards is provided for a nine-hole course and 2,000 yards for an eighteen-hole course.
 - (b) No accessory buildings are located on the premises except those for storage of golf course maintenance equipment and materials, golf carts, a pro shop for the sale of golf related articles, rest rooms, shower facilities and locker rooms.
 - (3) Keeping, stabling and maintenance of horses in excess of the density provisions of Subsection B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.

- (4) Family apartment subject to the following:
- (a) Not more than one family apartment is provided.
 - (b) The family apartment is within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure.
 - (c) The residential character of the area is retained as nearly as possible.
 - (d) The family apartment contains not more than 50% of the square footage of the existing residential structure if being proposed as an addition thereto.
 - (e) All setback requirements of the zoning district within which the family apartment is being located are complied with.
 - (f) The property owner resides on the same lot as the family apartment.
 - (g) The family apartment is occupied by members of the property owner's family only.
 - (h) The occupancy of the family apartment does not exceed two family members at any one time.
 - (i) The family apartment is the primary year-round residence of the family member(s) residing therein.
 - (j) The family apartment will not be sublet or subleased by either the owner or family member(s) at any time.
 - (k) Scaled plans of any proposed remodeling or addition to accommodate the family apartment have been submitted by the property owner or his or her agent to the Building Commissioner and the Zoning Board of Appeals.
 - (l) Prior to occupancy of the family apartment, affidavits reciting the names and family relationship among the parties seeking approval have been signed and shall be signed annually thereafter for the duration of such occupancy.
 - (m) Prior to occupancy of the family apartment, an occupancy permit shall be obtained from the Building Commissioner.
 - (n) No such occupancy permit shall be issued until the Building Commissioner has made a final inspection of the proposed family apartment.
 - (o) Within 60 days from the date authorized family members vacate the family apartment, the owner or his or her agent shall remove any kitchen facilities in such unit and notify the Building Commissioner to inspect the premises.
 - (p) In addition to the provisions of Subsection C(4)(o) above, upon vacation of any family apartment, the premises shall be restored as nearly as possible to their state prior to the creation of such family apartment.

- (q) The Building Commissioner shall have the right to further inspect the premises upon which a family apartment has been vacated at least three times per year for three years consecutive from the time of such vacation.
- (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (6) Bed-and-breakfast. **[Added 2-20-1997]**
 - (a) Intent: It is the intent of this section to allow bed-and-breakfast operations in larger older homes to provide an adaptive reuse for these structures and, in so doing, encourage the maintenance and enhancement of older buildings which are part of the community character. This use will also create low-intensity accommodations for tourist and visitors and enhance the economic climate of the Town. By requiring that the operation is owner occupied and managed, the Town seeks to ensure that the use will be properly managed and well maintained.
 - (b) Bed-and-breakfast, subject to the following conditions:
 - [1] The bed-and-breakfast operation shall be located within an existing, owner-occupied single-family residential dwelling constructed prior to 1970 containing a minimum of four bedrooms as of December 1, 1996.
 - [2] No more than three bedrooms shall be rented for bed-and-breakfast to a total of six guests at any one time. For the purpose of this section, children under the age of 12 years shall not be considered in the total number of guests.
 - [3] No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests.
 - [4] The owner of the property shall be responsible for the operation of the property and shall be resident when the bed-and-breakfast is in operation. The owner shall file an affidavit with the Building Commissioner on an annual basis in the month of January stating that the property is the principal residence of the owner and that the owner is resident all times that the bed-and-breakfast is being operated. If the affidavit is not filed, the operation shall cease forthwith and any special permit issued shall be considered null and void. The requirement for filing of an affidavit shall not apply to bed-and-breakfast operations legally established prior to October 1, 1996.
 - [5] The single-family residence in which the bed-and-breakfast operation is located shall be maintained so that the appearance of the building and grounds remain that of a single-family residence.
 - [6] If the property is not served by public water, the applicant shall provide evidence to the Zoning Board of Appeals that the proposed use will not

have any detrimental impact on any private water supply on site or off site.

[7] No parking shall be located in any required building yard setback, and parking areas shall be screened from adjoining residential properties by a fence or dense plantings, not less than five feet in height. Parking areas may be permitted in front of the house, not within the required building front yard setback, provided that the Zoning Board of Appeals finds that the spaces are designed and located in a manner which retains the residential character of the property. Grass overflow areas may be utilized for parking, provided these are maintained with a grass ground cover in good condition.

[8] The special permit for the bed-and-breakfast conditional use operation shall be issued to the owner only and is not transferable to a subsequent property owner. This provision shall only apply to bed-and-breakfast conditional use operations established in residential districts.

D. Special permit uses. The following uses are permitted as special permit uses in the RB, RD-1 and RF-2 Districts, provided a special permit is first obtained from the Planning Board:

(1) Open space residential developments subject to the provisions of § 240-17 herein.

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RB	43,560 ²	20	100	20 ³	10	10	30 ¹
RD-1	43,560 ²	20	125	30 ³	10	10	30 ¹
RF-2	43,560 ²	20	150	30 ³	15	15	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]

³ One hundred feet along Routes 28 and 132.

§ 240-12. RB-1 Residential District.

A. Principal permitted uses. The following uses are permitted in the RB-1 District:

(1) Single-family residential dwelling (detached).

B. Accessory uses. The following uses are permitted as accessory uses in the RB-1 District:

(1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. [Amended 11-7-1987 by Art. 12]

- (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RB-1 District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Professional offices subject to the following:
 - (a) Professional offices are limited to use by two principal professional occupants and their customary clerical or other assistants.
 - (b) Any new construction or remodeling of existing structures is in keeping with the existing residential character of the area.
 - (c) Adequate off-street parking is provided in compliance with Article VI herein.
 - (2) Private nonresidential parking areas subject to the following:
 - (a) The parking area is located only within that section of the RB-1 District which is bounded on the north by the B Business District, on the south by South Street, on the east by Pleasant Street and on the west by Sea Street.
 - (b) The parking area is located on land contiguous to and in common ownership with a lot in the B Business District or in that section of the Residence B District described in § 240-12C(2)(a).
 - (c) The parking area is limited to use by the employees, servants, agents and customers of a lawfully existing business establishment without cost for its use.
 - (d) The parking area has no access from South Street.
 - (e) The parking area is paved and is striped in accordance with Article VI herein.
 - (f) The parking area is screened from views from abutting residential property by a visual barrier of evergreens or other suitable natural growth.
 - (g) All areas not used for parking are appropriately landscaped and adequately maintained.
 - (3) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.
 - (4) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (5) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (6) Family apartment subject to the provisions of § 240-11C(4) herein.

- (7) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (8) Bed-and-breakfast operation subject to the provisions of § 240-11C(6).
- D. Special permit uses. The following uses are permitted as special permit uses in the RB-1 District, provided a special permit is first obtained from the Planning Board:
 - (1) Open space residential developments subject to the provisions of § 240-17 herein.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RB-1	43,560	20	100	20 ²	10	10	30 ¹

NOTES:

¹ Or 2 1/2 stories, whichever is lesser.² One hundred feet along Routes 28 and 132.**§ 240-13. RC, RD, RF-1 and RG Residential Districts.**

- A. Principal permitted uses. The following uses are permitted in the RC, RD, RF-1 and RG Districts:
 - (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC, RD, RF-1 and RG Districts:
 - (1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
 - (1) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (2) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (3) Family apartment subject to the provisions of § 240-11C(4) herein.

- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- D. Special permit uses. The following uses are permitted as special permit uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § 240-17 herein.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC	43,560 ²	20	100	20 ³	10	10	30 ¹
RD	43,560 ²	20	125	30 ³	15	15	30 ¹
RF-1	43,560 ²	20	125	30 ³	15	15	30 ¹
RG	65,000	20	200	30 ³	15	15	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. [Added 10-26-2000]

³ One hundred feet along Routes 28 and 132.

§ 240-14. RC-1 and RF Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RC-1 and RF Districts:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC-1 and RF Districts:
- (1) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling. [Amended 11-7-1987 by Art. 12]
- (2) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section: [Amended 8-17-1995 by Order No. 95-195]
- (1) Home occupation, subject to all the provisions of § 240-46C, Home occupation by special permit.
- (2) Renting of rooms to no more than six lodgers in one multiple-unit dwelling.

- (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (4) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (5) Family apartment subject to the provisions of § 240-11C(4) herein.
 - (6) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (7) Bed-and-breakfast operation subject to the provisions of § 240-11C(6). **[Added 2-20-1997]**
- D. Special permit uses. The following uses are permitted as special permit uses in the RC-1 and RF Districts, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § 240-17 herein.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC-1	43,560 ²	125	—	30 ³	15	15	30 ¹
RF	43,560 ²	150	—	30 ³	15	15	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² A minimum lot area of 87,120 square feet is required in RPOD Overlay District. **[Added 10-26-2000]**

³ One hundred feet along Routes 28 and 132.

§ 240-15. RC-2 Residential District.

- A. Principal permitted uses. The following uses are permitted in the RC-2 District:
- (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the RC-2 District:
- (1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.
- C. Conditional uses. The following uses are permitted as conditional uses in the RC-2 District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Nursing and/or retirement home, but not to include hospitals, sanatoriums, convalescent homes or detached infirmaries or clinics, subject to the following:
 - (a) The site for the home consists of a minimum of five acres.
 - (b) The capacity-to-land ratio of the home does not exceed 10 beds per acre.
 - (c) Off-street parking is provided in compliance with Article VI herein.
 - (d) All buildings are located a minimum of 150 feet from existing public ways.
 - (e) The applicant has received a certificate of need from the Massachusetts Division of Medical Care, Department of Public Health.
 - (f) A perimeter survey has been submitted showing entire tract ownership, all abutting ownership and all existing ways and easements.
 - (g) A topographic plan of the entire site has been submitted by a registered land surveyor showing elevation contours at five-foot intervals and showing all existing structures and vegetative cover masses, such plan to have been compiled by means of on-site survey or approved aerial photographic method.
 - (h) A sketch plan of the proposed development has been submitted showing the density and location of structures, vehicular and pedestrian circulation, roadways and parking, proposed utilities and pertinent vegetation and soil and water conditions.
 - (i) An architectural rendering or sketch has been submitted of any proposed structure.
 - (2) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (3) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.
 - (4) Family apartment subject to the provisions of § 240-11C(4) herein.
 - (5) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- D. Special permit uses. The following uses are permitted as special permit uses in the RC-2 District, provided a special permit is first obtained from the Planning Board:
- (1) Open space residential developments subject to the provisions of § 240-17 herein.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RC-2	43,560 ²	20	100	20 ³	10	10	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² A minimum lot area of 87,120 square feet is required in RPOD Overlay District.

³ One hundred feet along Routes 28 and 132. [Added 10-26-2000]

§ 240-16. RAH Residential District. [Added 11-5-1988 by Art. 9]

A. Principal permitted uses. The following uses are permitted in the RAH District:

- (1) Single-family residential dwelling (detached).
- (2) Affordable single-family residential dwellings subject to the special bulk regulation contained herein. For the purpose of this section the term "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or governmental agency whose principal purpose is to provide housing to eligible tenants and/or buyers.

B. Conditional uses. The following uses are permitted as conditional uses in the RAH District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Family apartment subject to the provisions of § 240-11C(4) herein.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

C. Special permit uses. The following uses are permitted as special permit uses in the RAH District, provided a special permit is first obtained from the Planning Board:

- (1) Open space residential developments subject to the provisions of § 240-17 herein.

D. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)
				Front	Side	Rear	
RAH	43,560	125	—	30	15	15	30 ¹
RAH	10,000 ^{2,3}	20	75	30	15	15	30 ¹

¹ Or 2 1/2 stories, whichever is lesser.

² Provided that each dwelling is connected to the municipal sewage collection system when the site is located in a Groundwater Protection Overlay District.

- ³ As an alternative to individual lots, more than one single-family dwelling may be constructed on a lot, provided that the area of any such lot shall contain not less than 10,000 square feet of contiguous upland for each single-family dwelling constructed. When more than one single-family dwelling is constructed on a lot said dwelling shall be at least 30 feet apart.

§ 240-17. Open space residential development. [Amended 11-7-1987 by Art. 4; 6-17-1999]

- A. Purpose. This section has been established to permit a variation in development styles with efficient provision of roads and utilities; and to provide for the public interest by the preservation of open space in perpetuity, for protection of both natural resources and visual character of the land.
- B. Application. An open space residential development is permitted in all residential districts by special permit from the Planning Board.
- C. Minimum area. A minimum area shall be required sufficient to accommodate no less than four dwelling units based on all the requirements of the zoning district in which the development is located.
- D. Permitted uses. The following uses are permitted in an open space residential development:
- (1) Detached single-family dwellings and permitted accessory uses, including a cluster unit wastewater treatment facility.
 - (2) Common open space, preserved as such in perpetuity.
 - (3) Recreational facilities and activities exclusively for use by residents of an open space residential development, as approved by the Planning Board.
- E. Density requirements. The total number of residential units allowable within an open space residential development shall not exceed the number of units that would be allowed in the zoning district in which the site is located. The total number of units allowed shall be determined by submission of a preliminary grid sketch plan in accordance with Subsection M(1) herein, showing the total number of developable lots which could be obtained by utilizing a conventional grid subdivision, in conformance with all the zoning district area requirements, and with legal access over the road providing frontage. Lots on the preliminary plan which are not practically buildable because of impediments to development, such as slope in excess of 15%, utility easements, impervious soils, high groundwater or the location of wetlands, shall not be countable towards the number of developable lots, except that this provision may be waived for a development which is 100% affordable. For the purposes of this section, "affordable" shall mean dwellings sold or leased by a nonprofit corporation and/or government agency whose principal purpose is to provide housing to eligible tenants and/or buyers. Such housing shall remain affordable in perpetuity.
- F. Bulk regulations. The Planning Board may grant a reduction of the bulk regulations, provided that in no instance shall any lot contain less 15,000 square feet or have less than 20 feet of frontage, a front yard setback of not less than 20 feet, and side and rear

setbacks of not less than 12 feet. The minimum lot size may be further decreased by the Planning Board for a development which is 100% affordable, as defined in Subsection C above. No lot shall be panhandled more than two lots from a roadway, and panhandled lots shall only be permitted where the Planning Board finds that safe and adequate access is provided to the rear lot. As a condition of approval of the special permit, the developer shall submit evidence to the Planning Board of recorded easements, to assure access to joint driveways, where shown on the definitive subdivision plan.

- G. Soils. The nature of the soils and subsoils shall be suitable for the construction of roads and buildings. The Planning Board may require that soil borings or test pits be made on each lot as shown on the preliminary sketch plan, when borings required pursuant to the Subdivision Rules and Regulations,³ or the USDA, Soil Conservation Service maps indicate soils which may not be suitable for development. Soil borings if required, shall indicate soil texture, percolation rates and depth to the ground water table at its maximum elevation, in order to determine the buildability of each lot. Maximum groundwater elevation shall be determined using data available from the US Geological Survey publication "Probable High Ground Water Levels on Cape Cod."
- H. Wastewater.
- (1) The development shall be connected to Town sewer, or shall comply with the provisions of 310 CMR 15.00, of the State Environmental Code (Title 5) and the on-site wastewater disposal regulations of the Board of Health.⁴ No on-site sewage disposal leaching field systems shall be located within 150 feet from any wetland or surface water body, and where possible, located outside a riverfront area as defined according to 310 CMR 10.58, Riverfront Area. In no instance shall an open space residential development be approved which requires a variance to be granted from Title 5 of the State Environmental Code, or on-site sewage disposal regulations of the Board of Health with regard to depth to groundwater, distance to wetlands, buildings or public or private water supply wells. Such Board of Health variance shall render the special permit void as it pertains to the lot or lots affected.
 - (2) Based only upon recommendation by the Board of Health pursuant to MGL Ch. 41, § 81U, that lots in the development be connected to a clustered unit wastewater system, with or without nutrient removal, the Planning Board shall incorporate such requirement into a decision of approval, as a condition of that approval.
 - (3) The clustered unit wastewater system shall be located as far as possible from any sensitive environmental receptor, such as public or private wells, wetlands or water bodies, vernal pools, and rare and endangered species habitats.
 - (4) A clustered unit wastewater system location, design, maintenance, repair and operation is specifically subject to approval by the Board of Health as a condition of approval of the open space residential development.

3. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

4. Editor's Note: See 360, On-Site Sewage Disposal Systems.

- (5) Where the common open space is to be owned by the homeowners, a clustered unit wastewater system shall be located on a common open space lot, shown on the definitive plan and labeled as such. Where the common open space is to be deeded to the Town or to a nonprofit corporation pursuant to Subsection M(2)(b) below, a clustered unit wastewater system shall be located upon a separate lot and owned by a corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the wastewater treatment facility and the lot on which it is located shall pass with the conveyance of each building lot, or unit. The trust or corporation documents ensuring common ownership and management of the facility by the homeowners shall be submitted to the Planning Board with the definitive subdivision plan; and submitted to the Board of Health at the time of application of the definitive plan to the Planning Board.
- (6) The homeowners corporation or trust shall be responsible for the operation, maintenance, repair and eventual replacement of the wastewater treatment facility, in accordance with all federal, state, Cape Cod Commission and Board of Health requirements, as a condition of approval of the open space residential development special permit.

I. Water supply.

- (1) Public water supply shall ordinarily be required in open space residential developments, unless the applicant demonstrates that it cannot reasonably be made available to the site.
- (2) In areas dependent upon private wells, a special permit for an open space residential development shall only be granted upon recommendation from the Board of Health, pursuant to MGL Ch. 41, § 81U, with the finding that contamination of private wells both on site and off site, will not occur, either because the development has been designed with sufficient distance between private wells, septic systems and drainage facilities, or because the applicant is providing an appropriately located clustered unit wastewater system.
- (3) No variance shall be granted from Board of Health, well and on-site sewage disposal regulations, to waive the minimum separation distance between a public or private well and septic system, either on site or off site.

J. Floodplains.

- (1) No developable lots or roads shall be located on barrier beaches and coastal dunes as defined by the Wetlands Policy Act, or within the FEMA V Zones.
- (2) Filling, dredging and placement of utilities or structures within the one-hundred-year floodplain, as shown on the current National Flood Insurance Rate Maps, shall be avoided and development concentrated outside the A and B Flood Zones to the maximum extent feasible. If site conditions are such that compliance with this subsection would be impracticable, such activities may be allowed in conformity with § 240-34 herein.

- K. Preservation of site topographic features. The subdivision design shall preserve and enhance the natural topography of the land by locating roads and building sites in relationship to the existing topography so as to minimize the amount of land clearance, grading, and cuts and fills.
- L. Open space use, design and maintenance standards. Within an open space residential development, the balance of the area requirement for lot size shall be provided in common open space, designated as an open space lot or lots on the subdivision plan. The common open space shall be used, designed, and maintained in accordance with the following standards:
- (1) As a condition of approval of the special permit, open space shall be retained as such, in perpetuity, and not built upon or developed, except as permitted by the Planning Board pursuant to Subsection L(5) below.
 - (2) A minimum of 50% of the total upland area of the development shall be devoted to common open space, except that 60% shall be required where the minimum lot size of the zoning district exceeds one acre. Land set aside for roads, appurtenant drainage systems, and/or parking uses shall not be included in the percentage calculation of open space. The lot, or portion of an open space lot containing a clustered unit wastewater system, may be included in the open space minimum percentage requirement.
 - (3) Open space land shall be designed as a large contiguous lot or lots. Strips or narrow parcels of common open space shall be permitted only when necessary for access or for walking trails, including linkages to adjacent trails. Open space shall be located so as to provide maximum protection to the environmental resources of the site and of adjacent lands. Priority natural resources areas are as follows and shall include but not be limited to the following areas:
 - (a) WP and GP Groundwater Protection Overlay Districts, as shown on the most current Groundwater Protection Overlay District Map, adopted as part of this chapter;
 - (b) Three-hundred-foot buffer zones to freshwater bodies and vernal pools; and two-hundred-foot riverfront buffer areas and vernal pools as defined according to 310 CMR 10.58;
 - (c) Critical and significant habitats as determined from the following sources: Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other town or county significant resource habitat maps;
 - (d) FEMA V, A and B Flood Zones as shown on the current National flood Insurance Rate Maps;
 - (e) Wetland and coastal habitats;
 - (f) Private supply wells;

- (g) Adjacent open space; and historic structures and archeological sites.
- (4) Open space may also be used to provide a buffer from roadways, to protect steep slopes from development activities, and to preserve a scenic corridor along roadways. The Planning Board in approving an open space residential development shall take into consideration any report from the Planning Department, Conservation Department or Conservation Commission relative to the location and design of the open space lot or lots.
- (5) Common open space shall be maintained in an open and natural condition, without clearing, predominantly in its present condition, for the protection of natural habitats, except as permitted by the Planning Board as follows:
 - (a) Where the open space is to be owned by corporation or trust of homeowners, a maximum of 10% of the common open space may be developed for common recreational facilities. The location and type of recreational facilities shall be shown on the definitive open space subdivision plan. A minimum setback of 50 feet shall be provided between any common open space structure and adjacent lots.
 - (b) Naturally existing woods, fields, meadows and wetlands should be maintained and improved in accordance with good conservation practices. The Planning Board shall require submission of a maintenance plan where improvements to, or on-going maintenance, would enhance the open space lot or lots.
 - (c) Subject to approval of a management plan by the Planning Board, the following may be permitted: farming, agriculture, horticulture, silviculture, and the harvesting of crops, flowers and hay.
 - (d) The construction and maintenance of fences around the perimeter of the open space.
 - (e) The creation of unpaved walking paths, horseback riding trails or jogging paths for recreational use.
 - (f) The Planning Board may permit utility tie ins across open space, by an easement shown on the subdivision plan. Clearing should be no more than 10 feet in width, and the land promptly restored after installation. The Engineering Division of DPW shall be notified prior to the commencement of any clearance for utilities across open space.
- (6) In cases where the open space has been environmentally damaged prior to the completion of the development as a result of land clearance, grading, soil removal, excavation, harvesting of trees, refuse disposal, structures, or any other activity deemed inappropriate with the proposed uses of the common open space, the Planning Board may require the developer to restore or improve the condition and appearance of the common open space, and may require the posting of security, in a form and amount to be determined by the Planning Board, to ensure such restoration or improvement.

M. Common open space ownership and management.

- (1) The applicant for approval of an open space residential development special permit shall demonstrate to the Planning Board ownership and control of the open space. The Planning Board may require title insurance to the open space.
- (2) Upon approval by the Planning Board of the development concept, and subject to acceptance by the Town Council, the common open space shall be conveyed to and owned by one or more of the following entities:
 - (a) A nonprofit corporation, the principle purpose of which is the preservation of open space.
 - (b) A corporation or trust, owned or to be owned, by the owners of lots or residential units within the development. Undivided interest in the open space lot or lots shall pass with the conveyance of each building lot or unit.
 - (c) The Town for conservation purposes, or for a park in areas suitable for such purpose. No open space lot or lots shall be deeded to the Town without acceptance of the land by the Town Council and/or Town Manager, taking into consideration an advisory opinion of the Planning Board, Planning Department, Conservation Commission and/or Conservation Department, local or regional historic district and Historic Commission.
- (3) In those cases where the common open space is not conveyed to the Town, a restriction enforceable by the Town by Form 1A⁵ shall be recorded, provided that such land shall be kept in open and in a natural state and not built upon for residential use or developed for accessory uses such as parking or roadways. The applicant shall provide an agreement empowering the Town to perform maintenance of the common open space in the event of failure to comply with the maintenance program, provided that, if the Town is required to perform any maintenance work, the owners of lots or units within the open space residential development shall pay the cost thereof and that the cost shall constitute a lien upon their properties until said cost has been paid. Form 1A shall be fully executed and recorded with the development permits and approved subdivision plan.
- (4) In addition to the common open space required herein, the Planning Board may require that a developable lot or lots shall be set aside for the purpose of creating additional open space or recreational areas, pursuant to MGL Ch. 41, § 81U, for a period of not more than three years, during which time no clearing of the land or building shall be erected without approval of the Planning Board. Any such condition of approval shall be endorsed upon the definitive subdivision open space residential development plan.

N. Review procedures.

- (1) Prior to any application for an open space residential development, no land clearance, grading, cuts, fills, excavation, ditching, or utility installations shall

5. Editor's Note: Form 1A can be found at the end of Chapter 801, Subdivision Rules and Regulations.

occur, except for purposes of soil testing in accordance with all the requirements of the Subdivision Rules and Regulations,⁶ on any part of the development site prior to development application submission and approval as provided for herein. Commencement of land clearance or grading of the land for the construction of access or development of lots prior to application may be grounds for denial of the special permit by the Planning Board.

- (2) An application for an open space residential development special permit shall be submitted in conformity with the requirements and procedures for submission and review under the Subdivision Rules and Regulations of the Planning Board, and the following additional requirements in Subsection O below.

O. Preliminary plan requirements.

- (1) Applicants shall submit a preliminary plan to the Planning Board and the Board of Health prior to filing a formal special permit application, in order to obtain a consensus regarding the suitability of the open space residential development general design concepts, and to determine allowable density prior to submission of special permit application and definitive subdivision plan. In addition to the materials required for submission of a preliminary plan under the Subdivision Rules and Regulations, the preliminary materials shall include the following:
 - (a) Nine copies of a preliminary grid sketch plan, to demonstrate the number of buildable lots that can be obtained in conformance with the area requirements of the zoning district, and all the requirements of the Subdivision Rules and Regulations. Topographic information may be obtained from Information Technology, GIS unit.
 - (b) Two copies of the following maps for the development site as follows:
 - [1] USDA Natural Resources soil survey, maps and soil descriptions regarding the nature of the soils within the proposed development. The location of all test pit and soil logs shall be shown on the topographic plan, and soil log descriptions submitted to both the Planning Board and Engineering Division of DPW.
 - [2] Cape Cod Critical Habitats Atlas, APCC, 1990; Cape Cod Wildlife Conservation Project, significant habitat maps, prepared by the Compact of Cape Cod Conservation Trusts Inc.; and any other Town or county resource habitat maps; when these documents indicate critical or significant habitats on, or adjacent to the site.
 - (c) Nine copies of the proposed preliminary open space residential development plan showing the location and dimensions of all building lots, the location of open space lot or lots, the location and use of any common facilities or structures, including any proposed clustered unit wastewater system, and/or recreational facilities, the location of all ways and easements, private water

6. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

supply wells within the site, and public and private water supply wells on adjacent properties, and such other improvements as may be proposed.

- (d) A description of the proposed uses of the common open space and the preferred form of ownership and maintenance thereof.
 - (e) The Planning Board shall notify all abutters within 300 feet of the perimeter of the subdivision of the date, time and place that the preliminary plan will be considered, in order to receive input on the overall plan design, prior to application for the special permit and definitive plan approval.
- (2) Within 45 days after the receipt of a complete preliminary plan application as specified herein, the Planning Board shall give its approval, with or without modifications, or shall disapprove the proposal stating its reasons. The Town Clerk shall be notified in writing of such action. Preliminary approval for an open space residential development shall be valid for a period of six months.

P. Definitive application.

- (1) Applicants for a special permit for open space residential development shall, at the time of filing the application, submit a definitive subdivision open space residential development plan in conformity with § 240-17 herein, and the Subdivision Rules and Regulations of the Planning Board.⁷ The plan shall be derived from the approved preliminary concept plan required above. In addition to the materials required for submission of a definitive subdivision plan, the applicant shall submit documents signed by all owners and applicants as follows: deed of open space lot or lots to the Town, to a corporation, trust of homeowners, or to a nonprofit conservation organization; the corporation or trust documents; and Form 1A where applicable.⁸
- (2) The definitive development plan shall show the location of a cluster unit wastewater system or recreational facilities, if any.
- (3) The definitive plan shall indicate the limit of clearing along roadways, within both building lots and the open space lot or lots, and around any commonly owned facilities.
- (4) A maintenance plan for the open space lot or lots shall be submitted where required.
- (5) A note shall appear on the plan to the effect that "No lot as shown on this plan and approved in accordance with the open space residential development provisions of the Zoning Ordinance of the Town of Barnstable shall be further divided."
- (6) Upon receipt of an open space residential development application, the Planning Board shall proceed as with applications for special permits under MGL Ch. 40A.

7. Editor's Note: See Ch. 801, Subdivision Rules and Regulations.

8. Editor's Note: Form 1A is included at the end of Ch. 801, Subdivision Rules and Regulations.

Hearings on an application for a special permit under this section shall be held simultaneously with definitive subdivision plan review hearings.

Q. Approved open space residential developments.

- (1) Within 30 days of the Planning Board's endorsement of approval of the subdivision plan, the applicant shall record the plan, together with the following documents: the decision of the Planning Board; the deed of open space to the Town, or to a trust or corporation, or to a nonprofit conservation organization; Form 1A; the trust or corporation documents; as well as development agreements and covenants required under the Subdivision Rules and Regulations. Failure to comply with this provision shall result in the Planning Board approval being considered null and void. Upon application to the Planning Board, the Board may extend the thirty-day recordation period for good cause.
 - (2) Notwithstanding the provisions of § 240-125C herein, any special permit granted by the Planning Board for an open space residential development shall become void within two years from the date of issue, which two years shall not include time required to pursue or await determination of an appeal referred to in MGL Ch. 40A, § 17, unless any construction work contemplated thereby shall have commenced and proceeded in good faith continuously to completion, except for a good cause. All open space shall be dedicated at the time the permit-holder proceeds with construction under a building permit.
 - (3) A request to modify the open space residential development subdivision plan requiring a change in the configuration of the open space, or the road right-of-way shall require a duly noticed public hearing and notification of all parties in interest, pursuant to MGL Ch. 40A, § 15. The Planning Board shall decide whether or not the addition of recreational facilities or a change in location of such facilities shall constitute a modification of the approved plan. If lots have been conveyed out on an individual basis, the applicant for a modification of the special permit and/or installation of recreational facilities shall provide the Planning Board with evidence of the power to act upon the behalf of the corporation or trust of owners of the open space.
- R. An application for endorsement of approval-not-required plans to adjust lot lines between abutting lot owners, not involving open space lot lines or road right-of-way lines, shall not be considered a modification of the subdivision, or require notice to owners or abutters, provided that such plan and building locations comply with all the requirements of § 240-17 herein.**

§ 240-18. PR Professional Residential District.

A. Principal permitted uses. The following uses are permitted in the PR District:

- (1) Single-family residential dwelling (detached).
- (2) Two-family residential dwelling (detached).
- (3) Professional offices.

- (4) Licensed real estate broker's office.
- (5) Nursing home.
- (6) Rest home.
- (7) Medical/dental clinic.
- (8) Pharmaceutical/therapeutic use.
- (9) Hospital (nonveterinarian).
- (10) Multifamily dwellings (apartments), subject to the following conditions:
 - (a) The minimum lot area ratio shall be 5,000 square feet of lot area per each apartment unit for new multifamily structures and conversions of existing buildings.
 - (b) The maximum lot coverage shall be 20% of the gross upland area of the lot or combination of lots.
 - (c) The maximum height of a multifamily dwelling shall not exceed three stories or 35 feet, whichever is lesser.
 - (d) The minimum front yard setback shall be 50 feet or three times the building height, whichever is greater.
 - (e) The minimum side and rear yard setbacks shall be not less than the height of the building.
 - (f) A perimeter green space of not less than 20 feet in width shall be provided, such space to be planted and maintained as green area and to be broken only in a front yard by a driveway.
 - (g) Off-street parking shall be provided on site at a ratio of 1.5 spaces per each apartment unit and shall be located not less than 30 feet from the base of the multifamily dwelling and be easily accessible from a driveway on the site.
 - (h) No living units shall be constructed or used below ground level.
 - (i) The Zoning Board of Appeals may allow by special permit a maximum lot coverage of up to 50% of the gross area of the lot or combination of lots.
- (11) Personal service business such as the following: barber, beauty shop, shoe repair, tailor and dressmaker. **[Added 10-26-2000]**

B. Accessory uses. The following uses are permitted as accessory uses in the PR District:

- (1) Renting of rooms to not more than 10 persons by a family residing in the dwelling.
- (2) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsection (b)[2]. No more than a total of six rooms shall be rented to no more than a total of 12 guests

at any one time. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests. [Amended 10-26-2000]

- C. Conditional uses. The following uses are permitted as conditional uses in the PR District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:
- (1) Renting of rooms to not more than 10 lodgers in one multiple-unit dwelling.
 - (2) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
 - (3) Family apartment subject to the provisions of § 240-11C(4) herein.
 - (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
PR	7,500	75	—	20	7.5	7.5	30 ¹	25

¹ Or two stories, whichever is lesser, except that hospitals are exempt from height restrictions in the PR District.

NOTE: Front yard landscaped setback from the road lot line: PR: 10 feet, existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback, and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 3-11-1999]

§ 240-19. OR Office Residential District .

- A. Principal permitted uses. The following uses are permitted in the OR Office Residential District:
- (1) Single-family residential (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the OR Office Residential District:

- (1) The following uses are permitted within a structure constructed prior to 1970:
- (a) Bed-and-breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6), except Subsections (b)[1] and [2], and except that no special permit shall be required in the MA-2 Business District. For the purpose of this subsection, children under the age of 12 shall not be considered in the total number of guests.
 - (b) Renting of rooms for not more than three nonfamily members by the family residing in a single-family dwelling.
 - (c) An apartment, in addition to a principle permitted use, provided: where accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of a single-family residential structure.
 - (d) Home occupation, subject to all the requirements of § 240-46C, Home occupation by special permit, except that no special permit shall be required in the OR Office Residential District.
- C. Conditional uses. The following uses are permitted as conditional uses in the OR Office Residential District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Medical and dental office, laboratory services, subject to the Zoning Board of Appeals finding that:
- (a) The use has adequate parking and access;
 - (b) That the use as proposed will not adversely affect surrounding business or residential uses; and
 - (c) Subject to the conditions of Subsection B(1) above.
- D. Special permit uses. The following uses are permitted as special permit uses in the OR Office Residential District, provided that a special permit is first obtained from the Planning Board: (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
OR	10,000	50	100	30	10	20	30'	0.2

¹ Or two stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road right-of-way: 10 feet; 30 feet along South Street. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039]

§ 240-20. O-1, O-2 and O-3 Office Districts.

A. Principal permitted uses. The following uses are permitted in the O-1, O-2 and O-3 Districts:

- (1) Retail.
- (2) Business, professional and government offices, not to include medical and dental offices.
- (3) Research and development, technological and computer research, software development and data processing including computer operations services.
- (4) Publishing and printing establishments.
- (5) Packaging and delivery express services.
- (6) Apartments, in the O-1 Office District only, in a mixed use development, subject to the following conditions:
 - (a) Apartments shall be located above the first floor only.
 - (b) An area equivalent to a minimum of 30% of the gross floor area of the total number of apartments shall be designed for passive recreational use for residents of the building, and to the maximum extent feasible, by providing private open space as a yard, porch or deck, or a combination of private space and community space.
 - (c) The minimum lot area ratio for each apartment shall be 5,000 square feet of lot area per each apartment unit for new multifamily dwellings and conversions of existing buildings.

B. Accessory uses. The following uses are permitted as accessory uses in the O-1, O-2 and O-3 Office Districts: (Reserved for future use.)

C. Conditional uses. The following uses are permitted as conditional uses in the O-1, O-2 and O-3 Office Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Medical and dental office, laboratory services, subject to the Zoning Board of Appeals finding that:

- (a) The use has adequate parking and access; and
 - (b) That the use as proposed will not adversely affect surrounding businesses or residential uses.
- D. Special permit uses. The following uses are permitted as special permit uses in the O-1, O-2 and O-3 Office Districts, provided that a special permit is first obtained from the Zoning Board of Appeals:
- (1) Parking facility to serve a use or uses, located in this zoning district, or in a contiguous, nonresidential district.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
O-1 and O-2	20,000	125	—	25	10	20	30 ¹	0.4
O-3	10,000	125	—	25	10	20	30 ¹	0.3

¹ Or 2 1/2 stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Landscaped setback from the road right-of-way: 10 feet. The front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039]

§ 240-21. B, BA and UB Business Districts. [Amended 2-20-1997; 3-11-1999 by Order No. 99-056]

- A. Principal permitted uses. The following uses are permitted in the B, BA and UB Districts:
- (1) Retail and wholesale store/salesroom.
 - (2) Retail trade service or shop.
 - (3) Office and bank.
 - (4) Restaurant and other food establishment.
 - (5) Place of business of baker, barber, blacksmith, builder, carpenter, caterer, clothes cleaner or presser, confectioner, contractor, decorator, dressmaker, dyer, electrician, florist, furrier, hairdresser, hand laundry, manicurist, mason, milliner, news dealer, optician, painter, paper hanger, photographer, plumber, printer, publisher, roofer, shoemaker, shoe repairer, shoe shiner, tailor, tinsmith, telephone exchange, telegraph office, undertaker, upholsterer, wheelwright.

- (6) Gasoline and oil filling stations and garages.
- (7) Hotel/motel subject to the provisions of Subsection F herein, except that hotels/motels shall be prohibited in the BA District and prohibited in the Osterville UB District.
- (8) Any other ordinary business use of a similar nature.
- (9) Multifamily dwellings (apartments) subject to the provisions of § 240-18A(10)(a) through (h), except that multifamily dwellings shall be prohibited in the BA District.
- (10) Single-family residential structure (detached), except that single-family residential structures shall not be permitted in the B District.

B. Accessory uses.

- (1) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsections (b)[1] and [2]. No more than six total rooms shall be rented to not more than 12 total guests at any one time, and no special permit shall be required. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests. Bed-and-breakfast operations shall not be permitted in the B District.

C. Conditional uses. The following uses are permitted as conditional uses in the B, BA and UB Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and the specific standards for such conditional uses as required in this section:

- (1) Storage yards for coal, oil, junk, lumber or any business requiring use of a railroad siding; such uses being provided for in the B District only.
- (2) A building or place for recreation or amusement but not to include a use which is principally the operation of coin-operated amusement devices; such uses being provided for in the B District only.
- (3) Any manufacturing use; such uses being provided for in the B District only.
- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (5) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
B	—	20	—	20 ¹	—	—	30 ³	—
BA	—	20	—	20	—	—	30 ³	35
UB	—	20	—	20 ²	0 ²	0 ²	30 ³	35

¹ One hundred feet along Routes 28 and 132.

² Fifty feet when abutting a residentially zoned area.

³ Or two stories, whichever is lesser.

NOTE: Front yard landscaped setback from the road lot line:

B Business District: 10 feet, except 50 feet along Attucks Lane Extension and Independence Drive.

BA District: 10 feet.

UB District: 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein

F. Special hotel/motel provisions. In addition to the provisions of Subsection E, hotels and motels shall be developed only in conformance with the following:

- (1) The minimum lot area ratio shall be 2,500 square feet of lot area per each of the first 10 hotel/motel units, and an additional 250 square feet of lot area per each unit in excess of 10.
- (2) The minimum lot frontage shall be 125 feet.
- (3) The maximum lot coverage for all buildings shall not exceed 30% of the gross land area.
- (4) In addition to the parking requirements of § 240-54 herein, there shall be two additional off-street parking spaces provided per each 10 hotel/motel units or fraction thereof.
- (5) The minimum front yard setback shall be 30 feet.
- (6) The minimum total side yard setback shall be 30 feet; provided, however, that no allocation of such total results in a setback of less than 10 feet.
- (7) The minimum rear yard setback shall be 20 feet.
- (8) No other uses shall be permitted within the required yard setbacks, except driveways in a required front yard. All yard areas shall be appropriately landscaped and adequately maintained.
- (9) A site plan for each development or addition shall be submitted to the Building Commissioner along with the request for a building permit. The site plan shall include, but not be limited to, all existing and proposed buildings, structures,

parking, driveways, service areas and other open uses, all drainage facilities and all landscape features such as fences, walls, planting areas and walks on the site.

§ 240-22. BL-B Business District.

- A. Principal permitted uses. The following uses are permitted in the BL-B District:
- (1) Retail store.
 - (2) Building, sale, rental, storage and repair of boats.
 - (3) Retail sale of marine fishing and boating supplies.
 - (4) Retail sale of fishing bait, fish and shellfish.
 - (5) Commercial fishing, not including canning or processing of fish.
 - (6) Charter fishing and marine sightseeing and excursion facility.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the BL-B District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Hotel/motel, provided that such use shall connect to the Town sewer system.
 - (2) Lodging house, provided that such use shall connect to the Town sewer system.
 - (3) Restaurant, provided that such use shall connect to the Town sewer system.
 - (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (5) Public or private regulation of golf courses subject to the provisions of § 240-11C(2) herein.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
BL-B	7,500	20	75	20	7.5	7.5	30 ¹	—

¹ Or two stories, whichever is lesser

NOTE: Front yard landscaped setback from the road lot line:
BL-B business District: 20 feet, along South Street, Old Colony Road, and Ocean Street, 10 feet along all other roads.
Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein [Added 3-11-1999 by Order No. 99-056]

§ 240-23. MB-A1, MB-A2 and MB-B Business Districts.

A. Principal permitted uses. The following uses are permitted in the MB-A1, MB-A2 and MB-B Districts:

- (1) Commercial marina to include the berthing, building, sale, rental, storage and repair of boats, including the storage of boats on racks within the MB-A1 and MB-A2 Business Districts, subject to the provisions of Subsection A(6) below, and the installation and maintenance of docks, piers, ramps, floats and moorings.
- (2) Retail sale of marine fishing and boating supplies, marine electronics, marine motors and marine communication equipment.
- (3) Retail sale of fishing bait, fish and shellfish, such uses being provided for in the MB-B District only.
- (4) Commercial fishing, not including commercial canning or processing of fish; such use being provided for in the MB-B District only.
- (5) Whale-watching facility, such use being provided for in the MB-B District only.
- (6) Storage of boats on racks within the MB-A1 Business District subject to the following provisions:
 - (a) There shall be no more than 30 boats stored on racks for seasonal use (June 15 through Sept. 15);
 - (b) There shall be no launching or hauling of boats stored on racks for seasonal use before 8:00 a.m. or after 6:00 p.m.;
 - (c) There shall be unlimited year-round rack storage of boats that are not stored for seasonal use; and
 - (d) Any process by which seasonally used boats are launched and hauled, such as but not limited to by forklift or crane, shall be undertaken in a manner in which to minimize noise.

B. Accessory uses. The following uses are permitted as accessory uses to principal permitted use, Subsection A(1), Commercial marina, above.

- (1) Retail sale of fuel to marine vessels only.
- (2) Not more than one apartment for occupancy by the marina owner or by staff employed at the marina.

C. Conditional uses. The following uses are permitted as conditional uses in the MB-A1 and MB-A2 and MB-B Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Restaurant, such use being provided for in the MB-B District only.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses.

- (1) In the MB-A1 and MB-A2 Districts only, the retail sale of marine-related equipment, sporting-goods-type clothing, marine-related decorative goods and furnishings, as an accessory use to principal permitted use, Subsection A(1) above only

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
MB-A1	10,000	20	—	—	—	—	30 ¹	—
MB-A2								
MB-B	7,500	20	75	10	30 ²	30	30 ¹	—

¹ Or two stories, whichever is lesser

² The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required

NOTE: Front yard landscaped setback from the road lot line:

MB-A1 and MB-A2 Business District: 10 feet.

MB-B Business District: 10 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Amended 3-11-1999 by Order No. 99-058; 7-19-2001 by Order No. 2001-099]

§ 240-24. VB-A and VB-B Business Districts. [Amended 11-7-1987 by Art. 5; 10-4-1990 by Order No. 90-68; 2-20-1997; 1-7-1999; 3-11-1999 by Order No. 99-058]

A. Principal permitted uses. The following uses are permitted in Subsections (1) through (5) below in the VB-A and VB-B Districts, provided that in the VB-B District, no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: household quantities; waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21 § 52A; oil on site for heating of a structure or to supply an emergency generator:

- (1) Single-family residential dwelling (detached).
- (2) Retail store.
- (3) Professional or business office.
- (4) Branch office of a bank, credit union, or savings and loan institution.
- (5) Personal service business.

B. Accessory uses. The following uses are permitted as accessory uses in the VB-A District:

- (1) Apartments, provided they are:
 - (a) Accessory to uses listed in Subsection A(2) through (5) herein; and
 - (b) Located above the first floor only; and
 - (c) Comply with the standards of § 240-19A(10)(a) through (h) herein.
- (2) Bed-and-breakfast operation within an owner-occupied single-family residential structure, subject to the provisions of § 240-11C(6) except Subsections (b)[1] and [2]. No more than three total rooms shall be rented to not more than six total guests at any one time in the VB-B Business District, and no more than six total rooms shall be rented to no more than 12 total guests at any one time in the VB-A Business District. No special permit shall be required in the VB-A and VB-B Business Districts. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.

C. Conditional uses. The following uses are permitted as conditional uses in the VB-A District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Restaurant or other food-service establishment, but not including drive-in restaurants.
- (2) Gasoline and oil filling stations subject to the following:
 - (a) There shall be no sale of vehicles on the same premises; and
 - (b) There shall be no storage of vehicles on the premises.
- (3) Auto service and repair shops subject to the following:
 - (a) Such use shall be limited to two service/repair bays; and
 - (b) There shall be no sale of vehicles on the same premises; and
 - (c) Any outside storage of vehicles shall be screened from view to a height of six feet; and
 - (d) Any stored vehicles shall bear a current vehicle registration.

- (4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, subject to the following:
 - (a) Such use remains accessory to a principal use permitted in Subsection A herein; and
 - (b) A building permit shall be obtained prior to commencement of construction of such use.
 - (5) Place of business of blacksmith, decorator, upholsterer or undertaker.
 - (6) Telephone exchange.
 - (7) Place of business of building trades subject to the following:
 - (a) Not more than three full-time employees shall be on the premises at any time; and
 - (b) Any outside parking of commercial vehicles or equipment shall be screened from view to a height of six feet; and
 - (c) Any outside storage of materials or supplies shall be screened from view to a height of six feet, and shall be stored to a height not exceeding six feet.
 - (8) Light manufacturing uses subject to the following:
 - (a) The building housing such use shall not exceed 2,000 square feet of gross floor area; and
 - (b) The screening standards of Subsection C(7)(b) and (c) herein.
 - (9) Storage yard for coal, oil, lumber, or other business dependent on using a railroad siding subject to the following:
 - (a) The screening standards of Subsection C(7)(b) and (c) herein.
- D. Conditional uses. The following uses are permitted as conditional uses in the VB-B District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, subject to the following:
 - (a) Such use remains accessory to a principal use permitted in Subsection A herein; and
 - (b) A building permit shall be obtained prior to commencement of construction of such use.
- E. Special permit uses. (Reserved for future use.)
- F. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
VB-A	10,000	20	100	10	30 ²	20	30 ¹	25
VB-B	43,560	160	—	40	30	30	30 ¹	10 ³

¹ Or two stories, whichever is lesser

² The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than the 10 feet, except abutting a residential district, where a minimum of 20 feet is required.

³ No more than 33% of the total upland area of any lot shall be made impervious by the installation of buildings, structures and paved surfaces.

NOTE: Front yard landscaped setback from the road lot line:

VB-A 10 feet.

VB-B 20.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

§ 240-25. HB Business District. [Amended 11-7-1987 by Art. 1; 5-7-1988 by Art. 4; 3-11-1999 by Order No. 99-058]

A. Principal permitted uses. The following uses are permitted in the HB Business District:

- (1) Office, but not including medical office.
- (2) Bank, but not consisting in whole or in part of drive-in bank or drive-up automatic teller.

B. Accessory uses. (Reserved for future use.)

C. Conditional uses. The following uses are permitted as conditional uses in the HB District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Any use permitted in the B District not permitted in Subsection A herein, subject to the following:
 - (a) Such uses do not substantially adversely affect the public health, safety, welfare, comfort or convenience of the community.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
- (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
HB	40,000	20	160	60 ²	30 ³	20	30 ¹	30

¹ Or two stories, whichever is lesser

² One hundred feet along Route 28 and 132.

³ The minimum total side yard setback shall be 30 feet, provided that no allocation of such total results in a setback of less than 10 feet, except abutting a residential district, where a minimum of 20 feet is required.

NOTE: Front yard landscaped setback from the road lot line:

HB 45 feet.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

§ 240-26. HO Highway Office.

A. Standards applicable to all uses within the HO Highway Office District:

- (1) Naturally occurring vegetation, including trees shall be incorporated into the design of the site wherever possible, and natural vegetation shall be retained in landscaped buffer areas to the maximum extent feasible. The limit of clearing shall be indicated on plans submitted to site plan review pursuant to Article IX herein. No clearance of vegetation shall occur prior to submission to site plan review.
- (2) No nonresidential development shall have principal vehicular access through a single-family residentially zoned area, or principal vehicular access via a road located in a single-family residential zoning district.
- (3) Building and site design shall, in so far as practical, conform to officially published, local and regional design guidelines applicable to Cape Cod.

B. Principal permitted uses. The following uses are permitted in the HO Highway Office Zone:

- (1) Business, professional and governmental office; bank, including drive-through facilities.
- (2) Medical, dental office and clinic, including patient treatment facilities.
- (3) Technological and computer research, data processing; computer operations.
- (4) Publishing and printing operations.

C. Accessory uses. (Reserved for future use.)

- D. Conditional uses. (Reserved for future use.)
- E. Special permit uses. (Reserved for future use.)
- F. Bulk regulations. [Amended 7-16-1998 by Order No. 98-133; 3-11-1999 by Order No. 99-056; 3-11-1999 by Order No. 99-058]

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
HO	2 acres	200	—	45	15	20	30 ¹	0.3

¹ Or two stories, whichever is lesser.

³ Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road lot line: 45 feet. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- (1) Dimensional requirements.
- (2) Landscape buffer:
 - (a) Landscape buffer from side yard: 10 feet.
 - (b) Landscape buffer from rear yard: 20 feet.
 - (c) Natural vegetation shall be retained in landscape buffers and supplemented, or replanted where natural vegetation has been lost, with similar plant materials common to Cape Cod, including bushes, trees and ground cover.

§ 240-27. S&D Service and Distribution District. [Amended 7-16-1998]

- A. Principal permitted uses. The following uses are permitted in the S&D District:

- (1) Retail store.
- (2) Professional/business office.
- (3) Bank.
- (4) Personal service store/shop.
- (5) Warehouse and distribution facility.
- (6) Servicing, storing and processing of goods in transit.
- (7) Facilities for service-type trades, including shops and storage yards.

B. Accessory uses. The following uses are permitted as accessory uses in the S&D district.

- (1) Offices, garages and related facilities for uses listed as principal permitted uses in Subsection A herein.

C. Conditional uses. The following uses are permitted as conditional uses in the S&D District provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

- (1) Full-service restaurants and delicatessens.
- (2) Kennels as defined in MGL Ch. 140, § 136A, or other similar facilities for the breeding, boarding, sale or training and related treatment of common domestic pets subject to the following:
 - (a) The Board may impose reasonable conditions, including without limitation, measures for security and the reduction or containment of noise so as to render such uses as inoffensive as practicable.
- (3) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use
- (4) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
S&D	43,560	20	160	60	25	40	30 ¹	25

¹ Or two stories, whichever is lesser.

NOTE: Front yard landscaped setback from the road lot line:

S & D: 20 feet, 60 feet from Route 28.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Amended 3-11-1999 by Order No. 99-056]

§ 240-28. SD-1 Service and Distribution District.

A. Principal permitted uses. The following uses listed in Subsection A(1) through (9) below are permitted in the SD-1 Service and Distribution District, provided that no operation shall result in the treatment, generation, storage or disposal of hazardous materials, except as follows: very small quantity generators; waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A; oil on site for heating of a structure or to supply an emergency generator.

- (1) Medical, dental offices, laboratory services, treatment facilities.
- (2) All other business, governmental and professional offices.
- (3) Bank.
- (4) Personal service business including but not limited to the following: barber, beauty shop, dry-cleaning pickup service, shoe repair, tailor and dressmaker.
- (5) Mortuary or funeral home.
- (6) Research and development, technological and computer research, software development and data processing including computer operations services.
- (7) Publishing and printing establishments.
- (8) Boat sales and storage.
- (9) Contractor service establishments:
 - (a) Wholesale sales and distribution of building materials including plumbing, carpentry, lumber, electrical, heating and air conditioning, and other similar service or repair businesses; associated showrooms and sales/display space customarily accessory to such uses; and
 - (b) Landscaping, construction and site preparation, and other similar service businesses, provided that all outdoor storage of building materials, trucks and landscaping equipment and materials, are screened from view from Route 28 and Old Post Road.

B. Accessory uses. (Reserved for future use.)

C. Conditional uses. (Reserved for future use.)

- (1) Retail store, provided that Zoning Board of Appeals finds that:
 - (a) The proposed business is a low- to average-volume traffic generator, not to include a high-volume traffic generator such as a convenience store. The applicant shall provide the Zoning Board of Appeals with traffic data including a comparison with trip generation rates for different types of retail uses, from the Institute of Transportation Engineers "Trip Generation Manual."
- (2) Full-service restaurant, subject to the following conditions:

- (a) Food is served to customers at tables by waitpersons, except that the Zoning Board of Appeals may permit buffet style dining;
- (b) Approximately 85% of food is consumed on the premises;
- (c) Bar seats or places do not exceed 15% of restaurant seats;
- (d) Entertainment shall be limited to nonamplified dinner music;
- (e) No drive-in or outdoor take-out counter facilities shall be permitted; and
- (f) Access shall be from Industry Road or Old Post Road.

D. Special permit uses. (Reserved for future use.)

E. Bulk regulations (dimensional requirements).

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ² Retail/All Other
				Front	Side	Rear		
SD-1	43,560	150	—	45	15	20	30 ¹	0.25/0.30

¹ Or two stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road right-of-way: 20 feet, 45 feet from Route 28.

Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 7-15-1999]

§ 240-29. MA-1 Business District.

- A. Purpose. In a manner consistent with the Barnstable Comprehensive Plan, the purpose of this section of the Zoning Ordinance is to maintain and enhance the historic look and character, economic vitality, creative and efficient use of available space, and community-oriented, mixed-use environment of the Historic Main Street area. This district incorporates the historic central business district of Hyannis, which is fully served by municipal utilities. A mixture of uses within the district and within lots and buildings is encouraged in order to accommodate a wide variety of users and to maintain and enhance the district's village feel. All efforts should be made to create a pedestrian-oriented environment within the district by creating links between existing and proposed areas of activity in order to better service needs of residents and visitors. Accommodation of pedestrians, bicyclists and public transit should take precedence over the needs for motorized vehicles, given the availability and distribution of municipal

parking facilities in the district and the desire to maximize the utility of scarce land resources.⁹

B. Principal permitted uses. The following uses are permitted in the MA-1 Business District, provided that no drive-through facilities are provided:

- (1) Apartment or apartments subject to the following standards:
 - (a) There shall be no more than 10 apartments.
 - (b) There shall be a minimum of 2,000 square feet of lot area per apartment.
 - (c) The apartment or apartments shall be located above the ground floor story only.
 - (d) Apartment shall have a minimum gross floor area and a minimum number of bedrooms as follows:
 - [1] A one-bedroom apartment shall contain not less than 800 square feet of gross floor area;
 - [2] A two-bedroom apartment shall contain not less than 1,000 square feet of gross floor area; and
 - [3] Studio apartments and apartments with three or more bedrooms shall not be permitted.
- (2) Business and professional offices, not to include medical and dental offices, and not located on the ground floor story.
- (3) Bank.
- (4) Retail uses.
- (5) Personal service business including but not limited to the following: barber, beauty shop, dry-cleaning pickup service, shoe repair, tailor and dressmaker.
- (6) Research and development facility, not on the ground floor story.
- (7) Publishing and printing establishment.
- (8) Food service establishment.
- (9) Membership club for a health or athletic facility, not on the ground floor story.
- (10) Movie picture and live theater.
- (11) Repair and servicing of appliances, computers, electronic equipment, tools and other small machinery common to homes and businesses, not to include any appliance, tool or small machinery which is powered by hydrocarbon fuels.
- (12) Trade or professional school, not on the ground floor story.

9. Editor's Note: See Ch. 112, Historic Properties; and Ch. 141, Outdoor Businesses.

C. Accessory uses.

- (1) Entertainment and/or dancing, as an accessory use to a full service, food service establishment, subject to the following requirements:
 - (a) Food is served to customers at tables by waitpersons.
 - (b) Bar seats and places do not exceed 20% of restaurant seats.
 - (c) Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the restaurant, whichever is less.

D. Special permit uses. The following uses are permitted in the MA-1 Business District, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the following standards:

- (1) Eleven apartments or more, subject to all the requirements of Subsection B(1)(b) through (d) above.
- (2) Bed-and-breakfast subject to the following requirements:
 - (a) The bed-and-breakfast operation shall be above the ground floor story only;
 - (b) No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests;
 - (c) No more than six total rooms shall be rented to no more than 12 total guests at any one time. For the purposes of this section, children under the age of 12 years shall not be considered in the total number of guests.
 - (d) Bed-and-breakfast operations shall be either owner-occupied or subject to the supervision of a manager resident upon the premises.
- (3) The Zoning Board of Appeals may permit apartments which do not meet the minimum gross floor area size requirements of Subsection B(1)(d) above, provided that:
 - (a) The applicant demonstrates that the physical layout of any proposed or existing structure is such that the applicant cannot meet the minimum gross floor area requirements; and
 - (b) Eight percent of the apartment units comply with the minimum size requirements of Subsection B(1)(d) above. This shall apply to five or more units. Where there are less than five units, all units shall comply with the minimum bedroom and gross floor area requirements of Subsection B(1)(d); and
 - (c) The Zoning Board of Appeals finds that the development as proposed will not have a detrimental impact upon surrounding businesses and residential uses.
- (4) Medical and dental offices, laboratory services, not on the ground floor story.

- (5) Hotel and motel, subject to all the requirements of § 240-21F above.
- (6) Outdoor commercial recreational use, miniature golf subject to the Zoning Board of Appeals finding that:
 - (a) The use as proposed will not be detrimental to surrounding business or residential uses by reason of noise, excessive lighting, or flashing lights.
 - (b) The proposed design of the facility is in keeping with the district and is harmonious with other, surrounding uses.
 - (c) The facility is small in scale, and is not clustered with other such uses.
 - (d) The Zoning Board of Appeals shall establish hours of operation for the facility.
- (7) Research and development facility, by special permit on the ground floor story. In reviewing the application, the Zoning Board of Appeals should take into consideration whether the use includes an active retail use or educational display along any Main Street frontage.
- (8) Business, professional offices, not to include medical and dental offices, by special permit on the ground floor story.
- (9) Bank drive-through, provided that there is no access from Main Street.
- (10) Pool and billiards hall, amusement arcade and bowling alley.
- (11) Private club or lodge, operated not for profit, and for members only.
- (12) Delivery service, provided there is no access or frontage on Main Street.

E. (Reserved for future use.)

F. Bulk regulations.

- (1) Table of Bulk Regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
MA-1	None	20	—	10	—	0 ¹	38 ³	100 ²

¹ A ten-foot minimum rear yard shall be required when abutting a residential district.

² Less any required setback.

³ Not to exceed three stories. See Subsection F(2) below.

NOTE: Front Yard Landscape Setback from the road lot line to a parking lot: 5 feet. The front yard landscaped setback shall be landscaped with a combination of trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 20 feet of road frontage. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

- (2) In the MA-1 Business District, notwithstanding the definition of "height" in § 240-128, Definitions, the following definitions shall apply:

BUILDING HEIGHT — The vertical distance from ground level to the average height of the highest roof plane.

HIGHEST ROOF PLANE — The roof plane having the highest ridge and having the highest average height, or the flat roof that is higher than any pitched roof, exclusive of cupolas, parapets, railings and antennas.

- (3) Reduction of front yard setback requirement. The Zoning Board of Appeals may by special permit reduce the front yard setback where such reduction: **[Added 11-15-2001 by Order No. 2002-029]**
- (a) Will result in a better alignment of buildings and an improvement of the design of the building facade.
 - (b) Will not create a significant interruption of the alignment of any sidewalk constructed on private property.

§ 240-30. MA-2 Business District.

A. Principal permitted uses. The following uses are permitted in the MA-2 Business District:

- (1) Single-family residential (detached).
- (2) The following uses are permitted within a structure constructed prior to 1970:
 - (a) Retail uses, not to include drive-in facilities.
 - (b) Business, professional and governmental office, not to include medical office or dental office.
 - (c) Personal service business including but not limited to the following: barber, beauty shop, photographers studio, shoe repair, tailor and dressmaker.

B. Accessory uses. The following uses are permitted as accessory uses in the MA-2 Business District:

- (1) An apartment, in addition to the principal permitted uses, provided that:
 - (a) Where it is accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of the single-family residential structure.
- (2) Bed-and-breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner-occupied single-family residential structure, constructed prior to 1970, subject to the provisions of § 240-11C(6), except Subsections (b)[1] and [2], and except that no special permit

shall be required in the MA-2 Business District. For the purpose of this subsection, children under the age of 12 shall not be considered in the total number of guests.

- C. Conditional uses. The following uses are permitted as conditional uses in the MA-2 Business District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section: (Reserved for future use.)
- D. Special permit uses. The following uses are permitted as special permit uses in the MA-2 Business District, provided that a special permit is first obtained from the Planning Board: (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
MA-2	7,500	50	—	20	10	20	30 ¹	0.3

¹ Or 2-1/2 stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Front yard landscaped setback from the road right-of-way: 20 feet. The front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. [Added 7-19-2001 by Order No. 2001-037, 2001-038, 2001-039]

§ 240-31. B-1 Business District. [Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039]

- A. Principal permitted uses. The following uses are permitted in the B-1 Business District:

- (1) Retail uses.
- (2) Medical, dental office, laboratory services.
- (3) All other business professional and government offices.
- (4) Bank.
- (5) Personal service business including but not limited to the following: barber, beauty shop, dry cleaning, shoe repair, tailor and dressmaker.
- (6) Restaurant.
- (7) Research and development, technological and computer research, software development and data processing including computer operations services.
- (8) Publishing and printing establishments.

- (9) Hotel or motel subject to all the requirements of § 240-21F.
 - (10) Apartments subject to § 240-18A(10), not to include Subsection A(10)(c).
 - (11) Packaging and delivery services.
 - (12) Gas station, not to include auto repair or bodywork.
- B. Accessory uses. The following uses are permitted as accessory uses in the -B-1 Business District: (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the B-1 Business District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section: (Reserved for future use.)
- D. Special permit uses. The following uses are permitted as special permit uses in the B-1 Business District, provided that a special permit is first obtained from the Zoning Board of Appeals:
- (1) Parking facility to serve a use or uses, located in this zoning district, or in a contiguous, nonresidential district.
 - (2) Drive-in facilities, where such use is permitted in § 240-30A above.
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Floor Area Ratio ²
				Front	Side	Rear		
B-1	10,000	20	100	20	10	10	30 ¹	0.4

¹ Or 2-1/2 stories, whichever is lesser.

² Floor area ratio (FAR) is the ratio of gross building square feet to lot area.

NOTE: Landscaped setback from the road right-of-way: 10 feet. The front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.

§ 240-32. IND Limited Industrial District.

- A. Principal permitted uses.
- (1) The following uses are permitted in the IND Limited District:
 - (a) Warehousing and wholesale distribution facilities of nontoxic and nonhazardous materials.
 - (b) Light manufacturing and assembly facilities.

- (c) Research and development facilities.
- (d) Professional or business offices, banks, architectural, engineering and drafting firms, computer operations centers, recreation facilities, and such sewerage treatment facilities as may have been allowed by previous Zoning Ordinance.
- (2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, hotels, motels, restaurants, manufacturing and processing uses, any use involved in the manufacture, storage, transportation, disposal or use of toxic or hazardous materials and any residential use.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the IND Limited District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
 - (1) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (2) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
IND LTD	90,000	20	200	50	30	30	30 ¹	25

¹ Or two stories, whichever is lesser.

- F. Special screening standards. In IND Limited Districts a buffer strip with a minimum depth of 30 feet at the rear and side site lines and a buffer strip of 50 feet at the front line shall be maintained in existing ground cover and trees or shall be replanted with native trees, shrubs and grasses which do not require continued nurturing and watering; provided, however, that in no instance shall the natural vegetation coverage on any lot consist of less than 25% of the total lot area. A maximum of two driveways, each not more than 50 feet wide, shall be allowed for ingress and egress.

§ 240-33. IND Industrial District.

- A. Principal permitted uses.

- (1) The following uses are permitted in the IND District:
 - (a) Any use permitted in the B District.
 - (b) Lumber, fuel and ice establishments.
 - (c) Contractors' yards.
 - (d) Manufacturing and industrial uses.
 - (e) Any use permitted in the S&D District.
 - (f) Recreation ice rink facilities.
 - (2) Specifically prohibited are petroleum refineries, landfills, resource recovery facilities, sewerage treatment facilities which process and discharge less than tertiary-treated effluent, and any other use which involves as a principal activity the manufacture, storage, use, transportation or disposal of toxic or hazardous materials.
- B. Accessory uses. (Reserved for future use.)
- C. Conditional uses. The following uses are permitted as conditional uses in the IND District, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:
- (1) Kennels as provided for in § 240-27C(2) herein.
 - (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.
 - (3) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.
- D. Special permit uses. (Reserved for future use.)
- E. Bulk regulations.

Zoning Districts	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks (feet)			Maximum Building Height (feet)	Maximum Lot Coverage as % of Lot Area
				Front	Side	Rear		
IND	90,000	20	200	60	30	30	30 ¹	25

¹ Or two stories, whichever is less.

- F. Special screening standards. The provisions of § 240-32F herein shall apply.

§ 240-34. Flood area provisions.

Permits for new construction, alteration of structures, or other development (any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations), at or below the base flood elevation as specified with the A and V Zones as determined by the Flood Insurance Study and designated on the special FIA Flood Insurance Rate Maps, Community Panel Numbers 0001C, 0003C, 0005C, 0006C, 0008C, 0011C, 0015C, 0016C, 0018C, 0021C and 0022C, revised August 19, 1985 (which are on file with the Town Clerk, Planning Board, Building Commissioner, and Engineering Department), shall be approved subject to the following:

- A. New construction or substantial improvement (repair, construction or alteration costing 50% or more of the market value of the structure before improvement, or if damaged, before damage occurred) of residential structures shall have the lowest floor (including basement) elevated to not less than base flood elevations. New construction or substantial improvement of nonresidential structures shall either be similarly elevated or, together with attendant utility and sanitary facilities, be floodproofed to not less than base flood elevations.
- B. Where floodproofing is utilized in accordance with Subsection A herein, a registered engineer or architect shall certify that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the base flood.
- C. Any new construction or substantial improvement to be under taken within flood areas shall be in accordance with Massachusetts Uniform Building Code, Sec. 748.0. The Building Commissioner shall review all proposed development within flood areas to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Sec. 404 of the Federal Water Pollution Control Act Amendments of 1972, U.S.C. § 1334, and shall obtain and maintain records of elevation and floodproofing levels for new construction or substantial improvement within the flood areas.
- D. Any new construction, alteration of structures or other development which is removed from the A or V Zones by subsequent Flood Insurance Map amendments shall only have to meet the requirements of its new zone designation.
- E. All subdivision proposals and other proposed new developments greater than 50 lots or five acres, whichever is lesser, shall include within such proposals base flood elevation data.
- F. Subdivision and development proposals, including utility and drainage systems, shall assure that they are located and designed to be consistent with the need to minimize flood damage.
- G. No land within areas designated as V (Velocity) Zones on the FIA Flood Insurance Rate Maps shall be developed unless such development is demonstrated by the applicant to be located landward of the reach of the mean high tide. All new construction and substantial improvement within the V Zones shall be elevated on adequately anchored pilings or

columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation, and shall be certified by a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.

- H. The following shall be prohibited within flood areas designated as V Zones:
- (1) Any man-made alteration of sand dunes and salt marshes which might increase the potential for flood damage.
 - (2) Use of fill.
 - (3) Mobile homes.
- I. The Zoning Board of Appeals may authorize exceptions from the flood regulations of this section by special permit within the flood areas in accordance with § 240-125 herein, as in any other zoning district, and may grant special permit exceptions from the requirements of this section in the case of new structures or substantial improvement to be erected on a lot contiguous to and surrounded by lots with existing structures and constructed below the base flood elevation, provided that the following are met:
- (1) A showing of good and sufficient cause.
 - (2) A determination that failure to grant the special permit would result in exceptional hardship to the applicant.
 - (3) A determination that the special permit will not result in increased flood heights, additional threats to public safety or environment, extraordinary public expense, or any conflict with requirements in accordance with Chapter 40A of the Massachusetts General Laws.
 - (4) The Zoning Board of Appeals has notified the applicant for the special permit in writing that the actuarial rates will increase as the first-floor elevation decreases, and that such construction below base flood elevation increases risks to life and property.
 - (5) Favorable recommendation from the Board of Health on all structures requiring sewerage disposal and/or water supply.
- J. Upon the granting of such a special permit or permits, the Zoning Board of Appeals shall maintain a record of all such special permits granted by said Board, including justification for their issuance, and report such special permits in its annual report to the Flood Insurance Administrator in accordance with the Housing and Urban Development Guidelines.
- K. The Zoning Board of Appeals may grant a special permit for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or the Old King's Highway Regional Historic District without regard to the procedures set forth in Subsection G herein.

§ 240-35. Groundwater Protection Overlay Districts. [Added 11-7-1987 by Art. 2; amended 11-4-1989 by Art. 5; 8-19-1993 by Order No. 93-105]

- A. Purpose. The purpose of this section is to protect the public health, safety, and welfare by encouraging nonhazardous, compatible land uses within groundwater recharge areas.
- B. Districts established. In order to carry out the purpose of this section, the following overlay districts are hereby established, and shall be considered as superimposed over any other district established by this chapter:

AP Aquifer Protection Overlay District
GP Groundwater Protection Overlay District
WP Well Protection Overlay District

- (1) The GP Groundwater Protection Overlay District is based on Zone 11 delineations to existing, proven future, and proposed future public supply wells, as determined by Geraghty and Miller, Inc., and as shown on Figure 44, in their report entitled "Groundwater Conditions, Town of Barnstable, Massachusetts, Volumes I of III; together with Appendices A-D and E-H in Volumes II of III and III of III," dated November 1993 and "Corrections, Zone II Delineations for Public Water Supply Wells, Town of Barnstable, Massachusetts," dated December 1993; except that the GP Groundwater Protection Overlay District (Zone II), to Barnstable Fire District wells 3 and 4, is delineated by Whitman and Howard, Inc. in a report entitled "Report on Prolonged Pumping Test and Zone II Delineation at Test Well Site 8-90, Barnstable Fire District, Barnstable, Massachusetts," dated October 1991. The Zone II delineations to existing and proven future wells have been approved by the Department of Environmental Protection, Executive Office of Environmental Affairs, Commonwealth of Massachusetts, in a letter to the Town of Barnstable dated March 13, 1996.
- (2) The WP Well Protection Overlay District is based on a five-year time of travel zone to existing, proven future and potential future public supply wells, delineated by Geraghty and Miller Inc., in reports referenced above, except that the WP Zone to Barnstable Fire District Well No. 2 is delineated by Earth Tech, consultant to Barnstable Fire District, summarized in a letter and a map to the district dated May 13, 1997. The WP Well Protection Overlay District to Barnstable Fire District 2 is that portion of the five-year time of travel zone located within the GP Groundwater Protection Overlay District (Zone 11).
- (3) The AP Aquifer Protection Overlay District consists of all areas of the Town, except those areas within the GP Groundwater and WP Well Protection Overlay Districts. The reports, letters and maps are on file with the Town Clerk. **[Amended 9-17-1998 by Order No. 99-012]**
- C. Overlay Districts Map. The overlay districts established by this section (the GP Groundwater Protection District; the WP Well Protection Overlay District; and the AP Aquifer Protection Overlay District) are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map. **[Amended 9-17-1998 by Order No. 99-012]**

- D. District boundaries. Where the overlay district boundaries divide a lot, each portion of that lot shall be subject to all the regulations applicable to the district in which it is located. **[Amended 9-17-1998 by Order No. 99-012]**
- E. AP Aquifer Protection Overlay District regulations.
- (1) Permitted uses. The following uses are permitted in the AP Aquifer Protection Overlay District:
 - (a) Any use permitted in the underlying zoning districts, except for those uses specifically prohibited by Subsection E(2) herein.
 - (2) Prohibited uses. The following uses are prohibited in the AP Aquifer Protection Overlay District:
 - (a) Any use prohibited in the underlying zoning districts.
- F. GP Groundwater Protection Overlay District regulations.
- (1) Permitted uses. The following uses are permitted in the GP Groundwater Protection Overlay District:
 - (a) Any use allowed in the underlying zoning districts, except those uses specifically prohibited in Subsection F(2) herein:
 - (2) Prohibited uses. The following uses are prohibited in the GP Groundwater Protection Overlay District:
 - (a) Any use prohibited in the underlying zoning districts.
 - (b) Landfills and open dumps as defined in 310 CMR 19.006.
 - (c) Junkyards, salvage yards and automobile graveyards, as defined in MGL Ch. 140B, § 1.¹⁰
 - (d) Mining of land, removal of sand and gravel, and quarrying of other raw materials.
 - (e) The removal of soil, loam, sand, gravel and other mineral substances to within four feet of the historic high-water mark unless the substances removed are redeposited within 45 days and the final grade exceeds four feet above the historic high-water mark, and except for excavations for the foundations of buildings and structures and the installation of utilities.
 - (f) Underground fuel storage tanks.¹¹
 - (g) Storage for resale of heating fuels, including but not limited to, oil, coal, gas and kerosene.

10. Editor's Note: See Ch. 502, Junk Dealers.

11. Editor's Note: See Ch. 326, Fuel and Chemical Storage Systems.

- (h) Sewage treatment plant, disposal works, or small package treatment facility subject to 314 CMR 5.00, except for the following:
 - [1] The replacement or repair of an existing facility that will not result in a design capacity greater than the design capacity of the existing system(s);
 - [2] Treatment works approved by the Department of Environmental Protection designed for the treatment of contaminated ground or surface waters; and
 - [3] Sewage treatment works including package treatment facilities, which are owned and operated by the Town of Barnstable, and located in areas with existing water quality problems attributable to current septic systems where there will be a net improvement in water quality with the installation of the treatment facility.
- (i) Commercial feeding of livestock.
- (j) Storage of road salt or other deicing materials.
- (k) Metal plating, finishing and polishing.
- (l) Chemical and bacteriological laboratories.
- (m) Boat, motor vehicle and aircraft cleaning, service and repair.
- (n) Dry-cleaning processing establishments.
- (o) Furniture stripping, painting and refinishing.
- (p) Any other use which generates, treats, stores or disposes of hazardous waste that are subject to MGL Ch. 21C and 310 MCR 30.00, except for the following uses:
 - [1] Very small quantity generators as defined by 310 CMR 30.00;
 - [2] Waste oil retention facilities for retailers of motor oil required and operated in compliance with MGL Ch. 21, § 52A.
 - [3] Treatment works approved by the Department of Environmental Protection designed in accordance with 314 CMR 5.00, for the treatment of contaminated ground or surface waters.
 - [4] Household hazardous waste collection centers or events operated according to 310 CMR 30.390.
- (q) Landfilling of sludge and septic as defined in 310 CMR 32.05.
- (r) Storage of sludge and septage, as defined in 310 CMR 32.05, unless in compliance with 310 CMR 32.30 and 310 CMR 32.41

- (s) Storage of animal manures unless protected from the elements and contained in a structure which prevents leachate from contaminating groundwater, in accordance with all the requirements of the United States Soil Conservation Service.
- (t) Stockpiling and disposal of snow and ice removed from highways and streets located outside of the GP and WP Districts which contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for ice and snow removal.
- (u) Storage of liquid petroleum products of any kind, except those incidental to:
 - [1] Normal household use and outdoor maintenance or the heating of a structure;
 - [2] Waste oil retention facilities required by MGL Ch. 21, § 52A;
 - [3] Emergency generators required by statute, rule or regulation;
 - [4] Treatment works approved by the Department designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;

and provided that such storage is either in a freestanding container within a building or in a freestanding container above ground level with protection adequate to contain a spill the size of the container's total storage capacity; however, replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline is allowed consistent with state and local requirements; and

- [5] Any other use which involves as a principal activity or use the generation, storage, use, treatment, transportation or disposal of hazardous materials.
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed of on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.
 - (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.
- G. WP Well Protection Overlay District regulations. **[Amended 8-19-1993 by Order No. 93-105]**
- (1) Permitted uses. The following uses are permitted in the WP Well Protection Overlay District:

- (a) Any use allowed in the underlying zoning districts, except those specifically prohibited in Subsection G(2) herein:
- (2) Prohibited uses. The following uses are prohibited in the WP Well Protection Overlay District:
 - (a) Any use prohibited in the underlying zoning districts.
 - (b) All uses prohibited in Subsection F(2) herein.
 - (c) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
 - (d) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
 - (e) Any use which uses, generates or stores, including racking for resale, toxic or hazardous substances, totaling at any one time more than 50 gallons liquid volume or 25 pounds dry weight.
- (3) Lot coverage. Unless the applicant demonstrates that all runoff is recharged on site, no more than 15% or 2,500 square feet, whichever is greater, of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed on on site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.
- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.

§ 240-36. RPOD Resource Protection Overlay District. [Added 10-26-2000]

A. Purpose.

- (1) The purpose of this section is to create a Resource Protection Overlay District overlaying residential zoning districts, and, in part, the Groundwater Protection Overlay District. The boundaries of the Resource Protection Overlay District shall include the recharge areas to the Centerville River, Popponessett and Shoestring Bays, and the Three Bays area of Cotuit and Osterville, so-called, together with areas dependent upon private well water supplies, and shall be as shown on the Barnstable Zoning Map as described in Subsection C below. When regulations are in conflict, the more restrictive regulation shall apply.
- (2) The Resource Protection Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council, October 30, 1997, and approved by the Cape Cod Commission, February 12, 1998. The purposes of the Resource Protection Overlay District include:
 - (a) To reduce nitrogen contamination by reducing impacts from septic systems, fertilizers, and runoff from impervious surfaces, which contamination

adversely affects groundwater, ponds and freshwater bodies, and south coastal marine embayments.

- (b) To reduce nitrogen loading to groundwater, surface water and coastal embayments to prevent deterioration of water quality, destruction of bottom habitat, loss of fin fish and shellfish habitat, closure of swimming areas, and other adverse environmental and economic impacts.
 - (c) To increase protection of groundwater quality in areas where no public wastewater treatment and no public water supply is provided; to ensure protection of private drinking water wells; to protect private drinking water wells from adverse impacts in areas of varying soil conditions that are vulnerable to contamination of groundwater due to environmental conditions such as impervious soils, high groundwater levels or steep slopes; and to protect private wells from impacts from adjacent road drainage systems.
 - (d) To reduce development potential. The Barnstable Local Comprehensive Plan identifies the potential for 36% more residential growth and a shortfall in public facilities to service that additional residential development. Potential shortfalls in public services include inadequate roads, lack of capacity in public wastewater treatment facilities, lack of options for public water supply development, and lack of capacity of schools and recreational facilities.
- B. Districts established. In order to implement the purpose of this section, the Resource Protection Overlay District is hereby established, and shall be superimposed over existing residential zoning districts established by this chapter, and as they may be amended from time to time.
- C. Overlay Districts Map. The boundaries of the Resource Protection Overlay District established by this section are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map, as amended with a file date of October 26, 2000, and a title of "Resource Protection Overlay District."
- D. Resource Protection Overlay District regulations. Within the Resource Protection Overlay District, the minimum lot area requirement of the bulk regulations in all residential zoning districts shall be 87,120 square feet.

§ 240-37. Dock and Pier Overlay District. [Added 2-1-2001]

A. Purpose.

- (1) The purpose of this section is to protect the general public interest in, and access to, the public tidelands of the commonwealth by creating a Dock and Pier Overlay District overlaying residential zoning districts. The boundaries of the Dock and Pier Overlay District shall include an area along the western and northerly shores of Cotuit Bay from Loop Beach to Handy Point, and shall be as shown on the Barnstable Zoning Map as described in Subsection C below. If the provisions of this amendment conflict with any other provisions of this chapter, the more restrictive provisions shall apply.

- (2) The Dock and Pier Overlay District implements the Barnstable Local Comprehensive Plan, adopted by the Barnstable Town Council on October 30, 1997, and approved by the Cape Cod Commission on February 12, 1998. The purposes of the Dock and Pier Overlay District include:
- (a) Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law (Strategy 2.2.6.1.1);
 - (b) Maintaining safe, open waters for recreational pursuits, including swimming, power boating, rowing, rowing instruction, sailing, sailing instruction, sailboat racing, and kayaking (Goal 2.2.4); and
 - (c) Protecting and retaining the natural open character and scenic vistas of the seacoast and water (Policy 2.2.6.2).
- B. Establishment of district.
- (1) In order to implement the purposes of this section, the Dock and Pier Overlay District is hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time.
- C. Overlay District Map. The boundaries of the Dock and Pier Overlay District established by this section are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map, as amended with a file date of August 30, 2000.
- D. Prohibition. Within the Dock and Pier Overlay District, the construction and/or installation of docks and piers is prohibited.
- E. Reestablishment of damaged or destroyed nonconforming docks or piers. The reestablishment of a lawful preexisting nonconforming dock or pier which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § 240-95, Reestablishment of damaged or destroyed nonconforming use or building or structure. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.
- F. Expansion of existing docks or pier. For the purposes of Article VIII, Nonconformities, the expansion of an existing dock or pier located within the Dock and Pier Overlay District shall be deemed to be substantially detrimental and shall be prohibited.

§ 240-38. Medical Services Overlay District. [Added 8-16-2001]

A. Purpose.

- (1) The purpose of this section is to permit the development and relocation of medical and healthcare services on a previously developed site with convenient regional access. The Medical Services Overlay District is established as a special district which overlays the Industrial Zoning District and, in part, the Groundwater Protection Overlay District. The boundaries of the Medical Services Overlay District are shown on a map of land entitled "Medical Services Overlay District"

filed with the Town Clerk, which map, together with all explanatory matter therein, is hereby incorporated in and made a part of this chapter.

- (2) Provisions of this section are designed to insure that all development activities associated with the Medical Services Overlay District will be carried out so as to provide for and maintain protection of neighboring properties, convenient and safe access for vehicular and pedestrian movement, fire-fighting and emergency rescue vehicles, satisfactory methods of stormwater management, groundwater recharge and handling and disposal of sewage and waste and adequate off-street parking. Nothing contained herein shall serve to invalidate or affect the provisions of any existing zoning ordinances which affect the proposed Medical Services Overlay District, including without limitations, the provisions of § 240-33 and 240-35 of this chapter.
- B. Principal permitted uses. The principal permitted uses allowed in the Medical Services Overlay District shall include ambulatory medical services, medical offices, dental offices and clinics including patient treatment facilities of an ambulatory nature, research and development activities associated with medical and healthcare issues and/or healthcare research, treatment or administration.
- C. Accessory use. (Reserved for future use.)
- D. Conditional use. (Reserved for future use.)
- E. Special permit use. (Reserved for future use.)
- F. Bulk regulations (dimensional requirements).
- (1) Minimum lot area: 90,000 square feet.
 - (2) Minimum lot frontage: 200 feet.
 - (3) Minimum setback, front: 60 feet (except 100 feet from Hadaway).
 - (4) Side/rear yard: 30 feet maximum.
 - (5) Building height: 30 feet or 2 1/2 stories, whichever is less.
 - (6) Front yard landscape buffer: 45 feet.
 - (7) Landscape buffer, rear and side yard: 30 feet.
 - (8) Maximum lot coverage: 25%.
 - (9) Maximum floor area ratio: 0.40.

§ 240-39. Shopping Center Redevelopment Overlay District. [Added 4-24-1996]

- A. Purposes.
- (1) The purpose of this § 240-39 is to permit the renovation and redevelopment of a large-scale integrated retail shopping center on a large site with convenient

highway access. The Shopping Center Redevelopment Overlay District is established as a special district which overlays another nonresidential zoning district or districts (including a Groundwater Protection Overlay District).

- (2) The Shopping Center Redevelopment Overlay District permits the redevelopment and expansion of a shopping center subject to the specific regulations and requirements contained in this § 240-39, which regulations and requirements shall govern even where they are inconsistent with or less restrictive than the other requirements of this chapter. The regulations of this § 240-39 relating to use, building and lot dimensions, development intensity, parking, signage and advisory site plan review shall apply only to a regional shopping center, and not to any other use that is allowed or permitted in the underlying zoning district.
- (3) The provisions of this § 240-39 are designed to assure that all development activities associated with a regional shopping center will be carried out so as to provide for and maintain:
 - (a) Protection of neighboring properties against harmful effects of uses on the development site;
 - (b) Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
 - (c) Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
 - (d) Satisfactory methods of stormwater management and groundwater recharge shall be provided with due regard to the protection of the Town's groundwater resources;
 - (e) Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
 - (f) Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
 - (g) Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic needs identified in the Barnstable/Yarmouth Transportation Study prepared by the Town in conjunction with the Town Local Comprehensive Plan;
 - (h) Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
 - (i) Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.

- B. Location. The boundary of the Shopping Center Redevelopment Overlay District is shown on a map of land entitled "Shopping Center Redevelopment Overlay Zoning District" filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this chapter.
- C. Relationship to underlying districts and regulations.
- (1) The Shopping Center Redevelopment Overlay District shall overlay all underlying districts so that any parcel of land lying in a Shopping Center Redevelopment Overlay District shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.
 - (2) All regulations of the underlying zoning district(s) shall apply within the Shopping Center Redevelopment Overlay District to the extent that they are not inconsistent with the specific provisions of this § 240-39. To the extent the provisions of this § 240-39 are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § 240-39 shall govern and prevail even if such other provisions are more restrictive than those set forth in this § 240-39.
- D. Definitions. The following definitions shall be applicable to land and its use within the Shopping Center Redevelopment Overlay District:

ADVISORY SITE PLAN REVIEW — The process set forth in § 240-39L of this chapter, and shall not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto.

AMUSEMENT USES — The principal use of stores or common areas in a regional shopping center for the operation of a coin-operated video arcade, game room, indoor playground, bowling alley or similar use (but restaurant and theater uses and amusement uses that are accessory to retail uses shall not constitute amusement uses).

GROSS FLOOR AREA — — The meaning set forth in § 240-128 of this chapter.

GROSS LEASABLE AREA — — Gross floor area, exclusive of mall areas, stairs, escalators, elevators, utility, storage and equipment rooms, mall offices, exit and service corridors, toilet rooms, maintenance areas, and mezzanine areas not used for the public sale or display of goods.

INITIAL REDEVELOPMENT — The expansion of existing improvements within the Shopping Center Redevelopment Overlay District which increases the gross floor area of all buildings within the district above that which is in existence on January 1, 1996, by 50,000 square feet of gross floor area or more in the aggregate pursuant to a special permit issued under § 240-39M hereof.

MAJOR STORE — A store having 50,000 or more contiguous square feet of gross floor area occupied by a single tenant or occupant and operated under a single trade name.

MEZZANINE(S) — An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 10% of the gross floor area of the store or area of the building in which the level or levels are located. Mezzanines which

are not used for the public sale or display of goods shall not be treated as an additional story for purposes of calculating maximum building height. Mezzanine space may be used for storage and for backroom office functions incident to the operation of gross floor area within the regional shopping center, but shall not be rented for such purposes to persons not operating gross floor area within the regional shopping center. Mezzanines which are used for the public sale or display of goods shall be treated as gross leasable area.

REDEVELOPMENT AREA — Land within the boundaries of the Shopping Center Redevelopment Overlay District, which is used or proposed for use as part of a regional shopping center, and encompassing one or more individual lots on which the regional shopping center will be situated.

REGIONAL SHOPPING CENTER — A concentration of stores and establishments devoted to retail shopping center uses and amusement uses including an enclosed structure (which may consist of several buildings) containing a total of not less than 500,000 square feet of gross floor area and located on a redevelopment area, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. A regional shopping center may consist of one or more lots and one or more buildings under separate ownership, provided that:

- (1) The lots and buildings are subject to an operating agreement or leasehold arrangements, provided that the areas used in common, including the central enclosed mall area, the parking structures and the exterior parking and circulation areas, will be under integrated management; and
- (2) The separate lots and buildings are developed with a unified approach to architectural and landscape design, pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, groundwater recharge and utilities.

RETAIL SHOPPING CENTER USES — A concentration of retail stores and service establishments, including restaurants, movie theaters and such other uses as are customarily found in a regional shopping center, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. Regional shopping center uses may include one area devoted to outdoor, tent-type sales of home and garden goods, provided that any such area is operated incident to a retail store having not less than 40,000 square feet of gross floor area and occupies not more than 5,000 square feet of area.

E. Application of requirements.

- (1) A redevelopment area may consist of more than a single building lot, and in such event the requirements of this chapter shall not be applied to individual building lots, but shall be applied to the entire redevelopment area as if the redevelopment area were a single building lot notwithstanding the fact that the building lots within the redevelopment area may be in different ownership.
- (2) The regional shopping center and other improvements within the redevelopment area may be developed in phases and may be developed and occupied under one or more building permits and occupancy permits.

- (3) The provisions of this § 240-39 shall not apply to any expansion of existing improvements within the Shopping Center Redevelopment Overlay District until the exercise of rights under a special permit issued under § 240-39M with respect to the initial redevelopment, and any such expansion which does not constitute the initial redevelopment shall be subject to all of the requirements of the underlying zoning district(s) including, without limitation, the requirement of a special permit for certain uses and structures within the district. Following the exercise of rights under a special permit issued under § 240-39M with respect to the initial redevelopment, this § 240-39 shall apply to all improvements thereafter constructed within the Shopping Center Redevelopment Overlay District.

F. Permitted and prohibited uses.

- (1) No more than 25% of the gross leasable area within the regional shopping center shall be devoted to uses other than retail shopping center uses, and not more than 75,000 square feet of gross leasable area in a regional shopping center shall be devoted to amusement uses unless a special permit is issued therefor by the Zoning Board of Appeals.
- (2) The following uses are prohibited in the Shopping Center Redevelopment Overlay District:
 - (a) All uses prohibited in § 240-35F(2) [GP Groundwater Protection Overlay District] of this chapter.
 - (b) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
 - (c) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
 - (d) Hotel/motel.
 - (e) Multifamily dwellings.
 - (f) Drive-through restaurant or drive-through bank.
 - (g) Gasoline and oil filling stations (other than a tire, battery and auto accessories store which is operated incident to a retail store having not less than 40,000 square feet of gross floor area in the regional shopping center and which does not provide for the changing of oil or lubrication of motor vehicles).
 - (h) Casinos and other gambling establishments (other than the incidental sale of lottery tickets as part of a use otherwise permitted in the Shopping Center Overlay District).

G. Bulk and dimensional regulations.

- (1) Land located within the Shopping Center Redevelopment Overlay District and used for a regional shopping center shall be subject to the dimensional controls set forth below:

- (a) Minimum area of redevelopment area: 50 acres.
 - (b) Minimum lot size (individual building lots): none.
 - (c) Minimum lot frontage (individual building lots): 20 feet.
 - (d) Minimum side, front and rear yards (other than at the perimeter of the redevelopment area): none.
 - (e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet.
 - [1] One hundred feet along Route 28/Falmouth Road and Route 132/Iyanough Road.
 - [2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.
 - (f) Minimum side and rear yards (at perimeter of redevelopment area): 30 feet.
 - (g) Maximum lot coverage as percentage of lot area of redevelopment area: 50%.
 - (h) Maximum building height: 42.5 feet or two stories, whichever is lesser.
- (2) Except as specifically stated to the contrary in Subsection G(1), the bulk and dimensional requirements set forth therein shall be applied to a redevelopment lot as if it were one lot, even though it may be comprised of several lots in different ownerships. More than one building may be located on a single lot within the Shopping Center Redevelopment Overlay District.
- (3) Skylights, mechanical penthouses and architectural features not designed for human occupancy (collectively, the "special features") shall be excluded in determining the height of any building within a regional shopping center. However, such special features shall be subject to the following restrictions and limitations:
- (a) Provided the same are approved in the special permit issued pursuant to § 240-39M hereof, architectural features shall be permitted above each entrance to the regional shopping center in excess of the maximum building height, provided such architectural features do not exceed 60 feet in height, and the length of the architectural features over any single entrance shall not extend over more than 25% of the entire length of the building wall above which such architectural features are located (measured on a building-by-building basis); and
 - (b) Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses), rooftop screening elements and skylight features over the food court and over the enclosed mall (collectively, the "rooftop features") shall be permitted to exceed the maximum building height, provided that they remain within the rooftop feature height limitation.

A rooftop feature shall be considered to remain within the rooftop feature height limitation if it falls below a sight line running 10° above the horizontal starting from a height of 42.5 feet. Rooftop features may exceed the rooftop feature height limitation only if the special permit described in § 240-39M so provides. In no case shall a rooftop feature exceed 60 feet in height. Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses) shall in any event be screened by use of parapet walls or similar elements if necessary.¹²

- H. Maximum increase in gross leasable area. No regional shopping center shall result in more than 1,200,000 square feet of gross floor area within the redevelopment area, measured on an aggregate basis. The maximum gross floor area of 1,200,000 square feet set forth above shall be reduced by 20,000 square feet of gross floor area for every acre by which the total area of the redevelopment area is less than 59 acres. For purposes of this § 240-39, the floor area of parking structures shall not be treated as gross floor area or gross leasable area.
- I. Limitation on impervious surfaces; buffer strip landscaping.
- (1) No more than 70% of the total redevelopment area shall be rendered impervious by the installation of buildings, structures and paved surfaces, measured on an aggregate basis, unless groundwater mitigation land is provided at a one-to-one ratio for any overage of impervious cover in the redevelopment area. Groundwater mitigation land shall mean land located within the same or a more restrictive Groundwater Protection District in a zone of contribution to the well fields operated as of January 1, 1996 by the Barnstable Water Company and/or the Barnstable Fire District which land is permanently restricted by or on behalf of the owners of the redevelopment area to be left in an open and natural state. However, even with the dedication of groundwater mitigation land, no more than 82.7% of the total redevelopment area shall be so rendered impervious. Rooftop and surface water drainage systems shall be designed and maintained in accordance with the standards set forth in § 240-39L(4)(j). For purposes of this § 240-39I, roadways (other than interior access drives) built in accordance with municipal specifications (as the same may be modified or waived by the Planning Board) and used as public way(s) or private way(s) shall not be treated as impervious surfaces and shall not be treated as part of the area of the district for purpose of such calculation.
 - (2) As a part of the portion of the redevelopment area to be maintained in pervious condition, a landscaped buffer strip of variable width shall be provided and maintained along the redevelopment area's frontage on Route 28, Route 132 and any extension of Enterprise Road which is laid out in conjunction with the redevelopment. Said landscaped buffer strip shall be a minimum of 15 feet in depth from the property line and contain at least 2.5% of the total redevelopment area. The design of this buffer strip may include sidewalks/bikepaths, berms, indigenous planting materials and other ground cover. Cross over access drives and signs provided for herein shall be permitted in the landscaped buffer strip, but

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

parking areas are prohibited. All other roadway frontages shall have a landscaped buffer strip of at least 10 feet.

J. Parking and loading. A regional shopping center shall be subject to the following minimum off-street parking and loading requirements:

- (1) Required off-street parking for a regional shopping center shall be provided at a ratio of not less than 4.3 parking spaces for each 1,000 square feet of gross leasable area of all buildings located in the regional shopping center. The foregoing parking requirement shall be calculated without regard to the multiple uses that may be contained in the regional shopping center.
- (2) All off-street parking spaces required by this § 240-39J shall be located within the redevelopment area, except that parking spaces may be located outside of the redevelopment area on another nonresidentially zoned lot provided (a) such other lot is located within 300 feet of the redevelopment area on which the use for which such spaces are required is located, and (b) such lot is in common ownership with, or subject to a long term lease or easement for the benefit of, all or a portion of the redevelopment area. In addition, parking spaces may be located at such other locations as may be approved by the Zoning Board of Appeals as part of any Traffic Demand Management Plan which shall be incorporated as part of the special permit issued under § 240-39M hereof.
- (3) Each off-street parking space shall have minimum dimensions of nine by 18 feet, excluding the driveway to such space. Parking stalls within the Shopping Center Redevelopment Overlay District which are designed at 90° shall have the following minimum dimensions:
 - (a) Ninety-degree parking dimensions:
 - [1] Stall width: nine feet, zero inches.
 - [2] Stall length: 18 feet, zero inches.
 - [3] Aisle width: 24 feet, zero inches.
 - [4] Bay width: 60 feet, zero inches.
 - (b) All parking stalls which are designed at angles other than 90° shall comply with the minimum parking space dimensions set forth in § 240-104 of this chapter. Landscaping shall be provided at the rate of one tree of three-inch caliper per eight spaces, and such trees shall be located within the parking area. Such parking area landscaping areas shall constitute not less than 5% of the land area devoted to grade-level parking fields. Above-grade parking structures shall be designed so as to provide a visual screen to shield, to the extent practicable, cars parked on the upper level from the view of pedestrians.

K. Signs in the Shopping Center Redevelopment Overlay District. Only the following types of signs shall be permitted in the Shopping Center Redevelopment Overlay District:

- (1) Large freestanding exterior signs:
 - (a) Maximum number: three signs.
 - (b) Maximum height: not to exceed 22 feet above grade.
 - (c) Maximum area: not to exceed 150 square feet per side exclusive of structures holding the sign. Reasonable efforts shall be exercised to minimize the size of any such supporting structures.
- (2) Wall signs identifying retail stores or restaurants having gross leasable area of greater than 25,000 square feet or having exterior public entrances; the food court; and the regional shopping center, provided that no wall sign shall extend higher than the top of the parapet wall:
 - (a) Maximum number: the lesser of two times the total number of exterior public entrances or 15 signs.
 - (b) Maximum letter height: five feet for signs accessory to major stores, and four feet for other such signs.
 - (c) Maximum area: 150 square feet for signs accessory to major stores, and 100 square feet for other such signs
- (3) Wall signs designating loading areas, service courts, employee entrances and similar areas:
 - (a) Maximum number: no limit.
 - (b) Maximum mounting height above ground: eight feet.
 - (c) Maximum area: six square feet.
- (4) Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the regional shopping center:
 - (a) Maximum number: three times the total number of vehicular entrances.
 - (b) Maximum height to top of sign above ground: seven feet.
 - (c) Maximum area: 16 square feet per side.
- (5) Hanging parking structure signs at vehicular entrances to parking structures:
 - (a) Maximum number: one per vehicle ramp access point to parking structures.
 - (b) Maximum height: one foot, six inches.
 - (c) Maximum area: 16 square feet per side.
 - (d) In addition, directional and parking area identification signs shall be permitted within the parking structures, and safety/height limitation markings shall be permitted on the exterior of the parking structures.

- (6) Parking lot identification signs.
 - (a) Maximum number: one per light post.
 - (b) Maximum size: three square feet per side.
- (7) One electronic reader board shall be permitted on one of the large freestanding exterior signs permitted under Subsection K(1), subject to the following restrictions:
 - (a) Maximum number: one.
 - (b) Maximum height: three feet per side.
 - (c) Maximum width: 10 feet per side.
 - (d) Maximum letter height: 12 inches high, with a total of no more than three lines of text per side.
 - (e) The text on any such electronic reader board:
 - [1] Shall not flash or trail;
 - [2] Shall only relate to promotional events within the regional shopping center; and
 - [3] May be changed no more frequently than once per day.
- (8) Banners which do not advertise particular stores or articles for sale shall be permitted.
- (9) In addition to the signs otherwise permitted under this § 240-39J, wall signs for freestanding buildings and movie theaters (meaning buildings and movie theaters which are not physically connected to the enclosed mall of the regional shopping center) which are otherwise permitted in the underlying zoning district under this chapter shall be permitted in the Shopping Center Redevelopment Overlay District. In addition, for so long as fewer than two of the freestanding signs described in Subsection K(11) are installed, one freestanding exterior sign shall be permitted for freestanding movie theaters, which sign shall have dimensions which meet the size requirements of the underlying zoning district.
- (10) In addition to the wall signs permitted under § 240-39K(2), one exterior marquee wall sign for movie theaters located within a regional shopping center shall be permitted with a size of up to 150 square feet.
- (11) In addition to the signs permitted under § 240-39K(1) hereof, up to two freestanding exterior signs for movie theaters located within a regional shopping center shall be permitted as follows:
 - (a) Maximum number: two.
 - (b) Maximum height: 14 feet above grade.

(c) Maximum area: not to exceed 175 square feet per side, exclusive of structures holding the sign.

(12) No special permit shall be required for signs that are in conformance with the standards set forth above.

L. Advisory site plan review and provisions.

(1) Findings. Owing to their physical characteristic and the nature of their operations, a regional shopping center may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of a regional shopping center and to minimize any harmful affects on surrounding areas.

(2) Purposes. The provisions of this section are designed to assure that all development activities associated with a regional shopping center will be carried out in furtherance of the purposes articulated in § 240-39A, taking into account the existing condition of the redevelopment area, the large-scale character of developments such as the regional shopping center, the customary site layout of regional shopping centers, and the necessity to permit natural light to illuminate the common areas of the regional shopping center (hereinafter referred to as the "design constraints").

(3) Advisory site plan review/when required. The provisions of this § 240-39L shall apply to development within the Shopping Center Redevelopment Overlay District in lieu of the site plan review provisions of Article IX of this chapter. At least 60 days prior to filing any DRI application with the Cape Cod Commission, the proponent of a regional shopping center shall make an informal filing with the Building Commissioner, in draft form, of such plans and materials relating to the DRI application as the proponent intends to file with the Commission with its DRI application and such relevant plans and materials relating to the MEPA process as are then available. Within 30 days following such informal submission, the Building Commissioner and other members of the Site Plan Review Committee established under Article IX of this chapter and such other Town staff as may be designated by the Building Commissioner shall review, comment upon and make recommendations with respect to the plans and materials so submitted, provided that the Building Commissioner shall have the right to extend such thirty-day period by an additional 30 days at the request of the Site Plan Review Committee. In conducting its review the Site Plan Review Committee shall consider the consistency of such plans and materials with the site development standards set forth in Subsection L(4) hereof. The informal filing and review described in this Subsection L(3) requires no approval and therefore does not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto; however, the Cape Cod Commission shall be invited to have representatives participate in the advisory site plan review process.

(4) Site development standards.

- (a) A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
- (b) Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
- (c) The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
- (d) At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.
- (e) Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.
- (f) All areas designed for vehicular use shall be paved with a minimum of either a 2 1/2 inches bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.
- (g) All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- (h) The provisions of § 240-52 of this chapter shall not apply to land within the Shopping Center Redevelopment Overlay District. Instead, exterior landscaping of a regional shopping center shall be subject to review in connection with the advisory site plan review process described herein.
- (i) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.
- (j) All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies (except for drainage structures

in place as of the effective date of this § 240-39). All drainage systems shall be designed to minimize the discharge of pollutants by maximizing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration (with due regard to the design constraints). Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Subject to ambient surcharge conditions, roof runoff shall be recharged to the ground via a system of dry wells and/or infiltration systems. Nontoxic roof materials shall be used to minimize the leaching of toxic materials to the groundwater. To minimize water utilization, all new plumbing fixtures shall be designed to meet water conservation measures as required under the State Building and Plumbing Codes. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-five-year storm and shall be reviewed by the Town Engineer. The materials submitted shall include provision for an appropriate maintenance program for such drainage structures to be implemented and maintained by the proponent. The materials submitted shall show adequate measures to mitigate pollution of surface or groundwater to minimize erosion and sedimentation. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

- (k) The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site taking into account the Barnstable/Yarmouth Transportation Study. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center such as, by way of example only, working with other major retailers along the 132 corridor to promote bus and shuttle bus activity, encouraging carpooling among employees, and/or similar measures, which materials shall be referred to as the "Traffic Demand Management Plan." Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.

M. Special permit provisions.

- (1) Special permit for regional shopping center.
 - (a) No building permit or occupancy permit shall be issued for any expansion of a regional shopping center which increases the gross floor area of the regional shopping center above that existing on the effective date of this § 240-39 by more than 50,000 square feet of gross floor area unless the Zoning Board of Appeals has issued a special permit approving such use in accordance with the provisions of this § 240-39M.
 - (b) A special permit for a regional shopping center may provide for phased development (and, if applicable, a projected phasing plan shall be provided to

the Board of Appeals as part of the special permit process under § 240-39M). A special permit for a regional shopping center shall become void two years from the date of issue unless any construction work contemplated thereby (or first phase thereof, if applicable) shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the use authorized thereby is commenced.

- (c) Any work done in deviation from a special permit granted pursuant to this § 240-39M shall be a violation of this chapter, unless such deviation is approved in writing by the Zoning Board of Appeals. However, a special permit may be granted based upon plans showing one or more permissible building areas and/or permissible parking structure areas, in which buildings and other structures are to be located, rather than with the locations of the buildings and other structures finally established. Provided the boundaries of such permissible building areas and/or permissible parking structure areas are approved by the Zoning Board of Appeals in connection with the special permit, once the special permit is granted, no separate approval of the Zoning Board of Appeals will be required for the actual location of the buildings or improvements within such permissible building areas and/or permissible parking structure areas [provided that no material change to the design or materials described in § 240-39M(2)(a) shall be made without the approval of the Zoning Board of Appeals.] The Zoning Board of Appeals may amend or modify a special permit upon the application of the developer of a regional shopping center and, if the Zoning Board of Appeals determines that such amendment or modification is minor in nature, such amendment or modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Zoning Board of Appeals, be less extensive than the plans and information required in this § 240-39M. Amendments or modifications determined by the Zoning Board of Appeals not to be minor in nature shall require a public hearing.
 - (d) The purpose of the special permit for a regional shopping center is to assure that the development of a regional shopping center is carried out in a manner which is (1) consistent with the purposes set forth in § 240-39A hereof and the site development standards set forth in § 240-39L(4) hereof, (2) consistent with the terms and conditions of any DRI permit issued by the Cape Cod Commission and the certificate of the Secretary of Environmental Affairs on the final environmental impact report, (3) with due regard given to the Design Guidelines for Cape Cod prepared by the Cape Cod Commission in light of the design constraints, and (4) consistent with such additional reasonable conditions as may be imposed by the Zoning Board of Appeals as are not inconsistent with the foregoing. The Zoning Board of Appeals shall grant a special permit for a regional shopping center upon its determination that the standards for the issuance of such special permit set forth in this Subsection M(1)(d) have been complied with, giving due regard to the design constraints.
- (2) Required contents of special permit application. The application for a special permit under this § 240-39M shall include:

- (a) Building elevation plans for all exterior facades of buildings and structures, at a scale of 1/16 inch equals one foot, or such scale as may be required by the Zoning Board of Appeals for detail drawings, indicating surface materials and colors, together with not less than three representative cross sections.
 - (b) A tabulation of the areas of the proposed site elements, including buildings (footprints and gross leasable area and gross floor area), parking structures and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).
 - (c) Updated versions of the materials submitted to the Building Commissioner in connection with the advisory site plan review process described in § 240-39L above.
 - (d) Any request for gross leasable area in excess of the use limitations set forth in § 240-39F(1).
 - (e) Any request to permit rooftop features to exceed the rooftop feature height limitation set forth in § 240-39G(3)(b).
 - (f) All materials relating to any request to permit off-site parking under § 240-39J(2).
 - (g) A description of the operating agreement and/or leasehold agreements contemplated in the definition of "regional shopping center."
 - (h) Additional information as may be required by the Zoning Board of Appeals as reasonably necessary to making the determinations required by this section.
- (3) Required procedures for special permit.
- (a) At least six copies are required of all plans, drawings and written information. Submissions shall be delivered to the Zoning Board of Appeals.
 - (b) The Zoning Board of Appeals may solicit the advice of any other Town agency or department it deems necessary to properly make the determinations required by this section.
 - (c) In issuing a special permit under this § 240-39M, the Zoning Board of Appeals shall give due regard to, and shall not be inconsistent with the decisions and recommendations of the Cape Cod Commission as set forth in any DRI permit or similar approval.
 - (d) The Zoning Board of Appeals shall also include as a condition of its special permit the performance of any written commitments made by the developer of a regional shopping center to the Zoning Board of Appeals, the Planning Board or the Town Council intended to reduce or limit the impacts, financial or otherwise, of the regional shopping center on the Town. Such conditions shall be based on the written information furnished to the Zoning Board of

Appeals by the Planning Board and Town Council. Such conditions shall be binding on the applicant for such special permit provided they are consistent with the provisions of Section 15 of Chapter 716 of the Acts of 1989 (the Cape Cod Commission Act).

- (e) The Zoning Board of Appeals may include as a condition of its special permit that, prior to the issuance of a certificate of occupancy for the regional shopping center, the Building Commissioner shall be provided with evidence that the operating agreement and/or leasehold arrangements contemplated in the definition of "regional shopping center" are in place.
- (f) If the proposed improvements which are the subject of an application for a special permit under this § 240-39M have not been subject to the review of the Cape Cod Commission because at the time of such application the Cape Cod Commission or the DRI process has been abolished, then the proposed improvements shall be subject to site plan review under Article IX of this chapter.

§ 240-40. Adult Use Overlay District. [Added 6-4-1998]

- A. District established. An Adult Use Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to § 240-6, Zoning Map, herein.
- B. Adult use. Within the Adult Use Overlay District, and only within the Adult Use Overlay District, an adult use may be permitted, provided that a special permit is first obtained from the Zoning Board of Appeals, subject to the following conditions of approval:
 - (1) The special permit shall be issued to the owner of the adult use and shall not transfer with a change in ownership of the business and/or property.
 - (2) The special permit shall lapse after two years, unless a shorter term is specified by the Zoning Board of Appeals. Upon receipt of a valid application, the Zoning Board of Appeals may grant another special permit, provided that the Board finds that all conditions of this § 240-40 herein have been complied with, and all conditions of approval of the Zoning Board of Appeals.
 - (3) The special permit shall not be renewed if any of the following has taken place on or in proximity to and associated with the premises, as provided for in Subsection B(2) above:
 - (a) Unlawful sexual activity.
 - (b) Gambling.
 - (c) Drug use.
 - (d) Violent crimes.
 - (e) Offenses against children.

- (f) Repeated public disturbances requiring intervention by the police.
 - (g) Any other illegal activities.
- (4) Violation of any of the conditions of approval of the special permit shall be grounds for nonrenewal of the special permit as provided for in Subsection B(2) above.
- (5) No special permit shall be issued to an owner convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272 § 28, (Matter harmful to minors, etc.), or similar laws in other states.
- (6) Where necessary to protect adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
- (7) No adult use shall be allowed within a building containing residential use, or upon a lot with residential use. No adult use shall be located within 500 feet of a residence.
- (8) Where the adult use is not governed by the Licensing Board, the following conditions shall apply:
- (a) A manager responsible for the operation of the establishment shall be designated by the owner, if the owner is not the manager. The manager shall register with the Building Commissioner. No manager shall be designated who has been convicted of violating MGL Ch. 119, § 63, (Inducing or abetting delinquency of a child) or MGL Ch. 272, § 28, (Matter harmful to minors, etc.) or similar laws in other states
 - (b) The owner and/or manager of the establishment shall be responsible for knowing what is taking place with respect to the patrons in all parts of the establishment at any given time.
 - (c) The Zoning Board of Appeals may establish the hours of operation.
 - (d) There shall be screening of windows and doors to prevent the public's view of the interior from any public or private right-of-way.
 - (e) The interior of an adult bookstore, adult video store, or adult paraphernalia store shall be well lit; and there shall be no closed booths.
- (9) The interior of an adult use nonlive entertainment establishment shall provide the following:
- (a) An anteroom or other content-neutral space which will identify the adult use through the use of content-neutral signage.
 - (b) All adult materials will be segregated from nonadult use nonlive entertainment materials.
 - (c) Written cautions will be made denying access to minors to the adult sections of the establishment.

- (d) The purchase point of adult use nonlive entertainment materials shall be segregated from the purchase point of nonadult use nonlive entertainment materials.
 - (e) Adult use nonlive entertainment purchases or rentals shall be bagged with an opaque material.
- C. Preexisting adult uses. Any adult use that was in existence as of the first date of publication of the notice of public hearing on the zoning amendment inserting this section regulating adult uses may continue to operate in the same location, without material change in scale or content of the business, provided that the owner complies with the provisions of this section requiring a special permit, including all relevant conditions imposed thereon.
- D. Prohibited uses. Nothing in this chapter is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violated any Town ordinance or statute of the commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter, or the exhibition or public display thereof.

ARTICLE IV Supplemental Provisions

§ 240-41. Vision clearance on corner lots.

In residential districts, on corner lots, no fence, wall or structure, planting or foliage more than three feet in height above the plan of the established grades of the streets shall be allowed in any part of a front or side yard herein established, that is included within the street lines at points which are 20 feet distant from their point of intersection measured along said street lines which will materially obstruct the view of a driver of a vehicle approaching a street intersection.

§ 240-42. Planning Board standards/certain subdivisions.

The Planning Board, as part of its review of subdivisions within 500 feet of the major arteries known as Routes 28, 132, 149 and West Main Street, is hereby authorized to:

- A. Prescribe, in distance and composition, a vegetation buffer strip between said major arteries and a proposed subdivision.
- B. Locate streets within a proposed subdivision so that:
 - (1) Ingress and egress onto the aforementioned major arteries is safe, efficient and convenient;
 - (2) A minimum number of roads intersect any such artery. Roads intersecting a major artery on the same side of the artery should, if possible, be not less than 500 feet apart between side lines. Roads intersecting a major artery on the opposite sides of such an artery should, if possible, be not less than 150 feet between center lines.

ARTICLE V
Accessory Uses

§ 240-43. Incidental and subordinate nature of accessory uses.

Within the zoning districts established herein, accessory uses or accessory buildings are permitted, provided that any such use or building is customarily incidental to, subordinate to and on the same lot as the principal use it serves except as otherwise provided for herein.

§ 240-44. Accessory uses permitted with special permit.

The following accessory uses are permitted, provided that a special permit is first obtained from the Board of Appeals:

- A. In residential zoning districts, accessory uses and structures on a lot adjoining or immediately opposite and across a road from the lot on which the principal use it serves is located, provided that both lots are retained in identical ownership with respect to both fee and nonfee interests.
- B. Uses accessory to permitted scientific research or scientific development or related production only if the Board finds that such accessory use does not substantially derogate from the public good. Such accessory use need not be located on the same lot as the principal use it serves.
- C. Other accessory uses requiring special permit authorization are provided for within the various zoning districts established herein.

§ 240-45. Off-street storage of trailers. [Amended 2-22-1996 by Order No. 95-194]

A mobile home may be stored in a garage or other accessory building or on the rear half of a lot owned or occupied by the owner of the mobile home. The location of the mobile home shall comply with the yard requirements of the zoning district in which it is located.

§ 240-46. Home occupation. [Added 8-17-1995 by Order No. 95-195]

- A. Intent. It is the intent of this section to allow the residents of the Town of Barnstable to operate a home occupation within single-family dwellings, subject to the provisions of this section, provided that the activity shall not be discernible from outside the dwelling; there shall be no increase in noise or odor; no visible alteration to the premises which would suggest anything other than a residential use; no increase in traffic above normal residential volumes; and no increase in air or groundwater pollution.
- B. After registration with the Building Commissioner, a customary home occupation shall be permitted as of right subject to the following conditions:
 - (1) The activity is carried on by the permanent resident of a single-family residential dwelling unit, located within that dwelling unit.
 - (2) The activity is a type customarily carried on within a dwelling unit.

- (3) Such use is clearly incidental to and subordinate to the use of the premises for residential purposes.
- (4) Such use occupies no more than 400 square feet of space.
- (5) There are no external alterations to the dwelling which are not customary in residential buildings, and there is no outside evidence of such use.
- (6) The use is not objectionable or detrimental to the neighborhood and its residential character.
- (7) No traffic will be generated in excess of normal residential volumes.
- (8) The use does not involve the production of offensive noise, vibration, smoke, dust or other particulate matter, odors, electrical disturbance, heat, glare, humidity or other objectionable effects.
- (9) There is no storage or use of toxic or hazardous materials, or flammable or explosive materials, in excess of normal household quantities.
- (10) Any need for parking generated by such use shall be met on the same lot containing the customary home occupation, and not within the required front yard.
- (11) There is no exterior storage or display of materials or equipment.
- (12) There are no commercial vehicles related to the customary home occupation, other than one van or one pickup truck not to exceed one-ton capacity, and one trailer not to exceed 20 feet in length and not to exceed four tires, parked on the same lot containing the customary home occupation.
- (13) No sign shall be displayed indicating the customary home occupation.
- (14) If the customary home occupation is listed or advertised as a business, the street address shall not be included.
- (15) No person shall be employed in the customary home occupation who is not a permanent resident of the dwelling unit.
- (16) Customary home occupations shall not include such uses similar to, and including the following:
 - (a) Barber- and beauty shops.
 - (b) Commercial stables or kennels.¹³
 - (c) Real estate or insurance office.
 - (d) The sale of retail or wholesale merchandise from the premises.
 - (e) The sale of antique or secondhand goods.

13. Editor's Note: See Ch. 376, Stables.

- (f) Service or repair of vehicles, and gasoline or diesel powered machinery.
 - (g) Contractors storage yards.
 - (h) Veterinary services.
 - (i) The manufacture of goods using heavy machinery.
 - (j) Medical or dental practice.
 - (k) Fortune-telling or palm reading.
- C. Home occupation by special permit. A home occupation may be permitted in the RC-1 and RF Single-Family Zoning Districts, provided that a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein, and subject to the specific standards for such conditional uses as required in this section:
- (1) All of the requirements of Subsection B(1) through (12) above.
 - (2) There is no more than one nonilluminated wall sign not exceeding two square feet in area, listing only the occupants' name and occupation.
 - (3) Not more than one nonresident of the household is employed.
 - (4) Home occupations shall not include the uses listed in Subsection B(16) above.
 - (5) The Zoning Board of Appeals may permit the home occupation to be located within an accessory structure located on the same lot as the single-family residential dwelling unit.
 - (6) Approval of site plan review is obtained.
 - (7) The special permit shall be issued to the applicant only at his or her residence, and shall not be transferable to another person, or to another location.

§ 240-47. Shared elderly housing. [Added 4-27-2000]

The Zoning Board of Appeals may grant special permits to allow for the use of structures as shared housing to provide care and shelter for persons with special needs due to age or disability. Said special permits shall be issued only with respect to owner-occupied single-family residences to be occupied by not more than six persons not less than 65 years of age or in approved instances persons of lesser age in need of special care, in addition to the family residents in the dwelling, and shall be conditioned upon the maintenance of proper licensed status as a shared residence under the laws of the commonwealth, and upon such other requirements as the Zoning Board of Appeals deems appropriate with respect to safety, parking, screening and other amenities designed to mitigate the impact of the use upon the neighborhood, and may be conditioned as to time and ownership in the discretion of the Board.

ARTICLE VI
Off-Street Parking Regulations

§ 240-48. Purpose.

It is the purpose of this article that all new, expanded or intensified uses within the Town provide adequate off-street parking.

§ 240-49. Applicability.

No use shall be intensified, except for single-family detached dwellings, without providing adequate off-street parking as provided herein.

§ 240-50. Computation.

Existing parking spaces may be counted to meet the minimum off-street parking requirements for an intensified use only if it can be demonstrated that they are not used as of right by existing uses and are exclusively available as of right for said proposed intensification.

§ 240-51. Location of parking spaces. [Amended 11-15-2001 by Order No. 2002-029]

All off-street parking spaces required by this article shall be located on the same lot as the use for which such spaces are required, except that in nonresidential districts, parking spaces may be located on another lot within 300 feet of, and in the same zoning district as, the use for which such spaces are required, except that in the MA-1 Business District, parking spaces may be located on another lot within 500 feet of the use, provided that no parking lot shall be created by the demolition of buildings within the MA-2 Business District, OR Office Residential District, or buildings with frontage on Main Street in the MA-1 Business District.

§ 240-52. Design and screening standards. [Amended 3-11-1999 by Order No. 99-056]

- A. Each off-street parking space shall have minimum dimensions of nine feet by 20 feet excluding the driveway to such space.
- B. Drainage facilities for each parking area shall be designed and constructed to contain stormwater runoff on the premises.
- C. Parking areas for five or more cars shall be designed with enough maneuvering space so that vehicles need not back onto a public way.
- D. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.

§ 240-53. Landscape requirements for parking lots.

- A. In all Single Family Residential Districts, where a legal use or a combination of legal uses requires the provision of five or more parking spaces pursuant to § 240-56, Schedule of Off-Street Parking Requirements, the following requirements shall apply:

- (1) All the requirements of § 240-53, Landscape Requirements of Parking Lots, Subsections C, D, E and F below; and
 - (2) A landscaped setback shall be provided from the surfaced area of a parking lot and all entrance and exit drives to the road lot line, a distance equal to the required front yard building setback requirement, or a maximum of 50 feet, whichever is lesser. Existing trees and shrubs shall be retained within the road right-of-way and within the required front yard landscaped setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the required front yard landscaped setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three inches shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein.
- B. In all office and commercial districts, a parking lot shall conform to the following requirements:
- (1) The surfaced area of a parking lot and all entrance and exit drives shall be set back from the side and rear lot lines, by a landscaped buffer, as follows: **[Amended 6-28-20001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; 11-15-2001 by Order No. 2002-029]**

**Landscape Buffer Setbacks (in feet)
to Parking Lots and Drives**

Zoning District	Side	Rear
B-1 Business	5	5
HO Highway Office	10	20
MA-1 Business	—	5
MA-2 Business	5	5
O-1, O-2, O-3 Office	5	5
OR Office Residential	5	10
PR Professional Residential	5	5
VB-B Village Business	15	15
All other office and commercial districts	10	10
Uses requiring 5 or more spaces in single-family residential districts	10	10

- (2) A ten-foot minimum, landscaped perimeter buffer shall be maintained between a building and the surfaced area of a parking lot or drive, except at entrances, building loading and utility locations. A walkway may be located within the

landscaped perimeter buffer, provided that the landscape area is not reduced to less than 40% of the area of the perimeter buffer.

- (3) Screening from residential districts: Where a parking lot containing five or more spaces abuts a residential district, or is located across the road from a residential district, it shall be screened as follows: (a) retention or planting of a sufficient area of natural vegetation to provide a dense screen; and/or (b) a dense hedge providing year-round screening, and/or (c) where vegetative screening is not practical, a fence, with not more than 50% open space between the panels. Such screening shall be maintained in good condition at all times, and no advertising shall be placed upon the screening. In an Historic District, fences and hedges may be subject to other regulation.
- C. In all office and commercial districts, at least 10% of the interior of a parking lot with 21 or more parking spaces shall be landscaped. Planting along the perimeter of a parking area shall not be considered as part of the 10% interior landscaping. Interior landscaped islands shall be distributed throughout the parking lot. At least one tree with a minimum three-inch caliper or larger shall be provided per eight spaces or any portion thereof, located within interior landscaped islands. Existing naturally occurring trees in good condition located in landscaped islands shall be credited towards this requirement only in those areas where the existing trees are located. No landscaped island shall have an overall width of less than six feet, except that in parking lots with 51 or more parking spaces, the overall width of islands shall be no less than 10 feet. A walkway may be located within an interior landscaped island, provided that the walkway is separated from the surfaced area of the drive or parking lot by a minimum of four feet of landscaped area. The interior landscape requirements of Subsection D herein shall not apply to parking lots used for sale and/or display of motor vehicles.
 - D. In all industrial districts, and in marine business districts, a parking lot with 21 or more parking spaces shall comply with the requirements of Subsections B(2) and (3) and C and E herein, except where a parking lot is also used for loading, material storage, or parking of trucks, boat storage and other equipment associated with the following uses: light industry, warehouse and distribution, contractor service establishments and commercial marinas. **[Amended 7-19-2001 by Order No. 2001-099]**
 - E. Where landscaped setbacks to parking areas, landscaped buffers to buildings, and landscaped islands within parking areas are required in Subsections B, C and D above, the following requirements shall apply:
 - (1) Existing natural trees and shrubs shall be retained within landscaped islands, and side and rear yard landscaped buffers to parking lots and drives wherever possible and supplemented with other landscape materials, in accordance with accepted landscape practices. Specimen trees shall be retained and, if practical, relocated within the site where necessary. Where natural vegetation cannot be retained, these areas shall be landscaped with a combination of low-maintenance grasses, trees and shrubs commonly found on Cape Cod. A list of recommended plant materials is on file with the Town Clerk and may also be obtained from the Planning Department. Plant materials shall be of sufficient size and density to create an attractive appearance. Brick or stone mulch shall not be used in place of ground

covers in landscaped islands. Where mulch is used, it shall be in such a manner that it will not wash into leaching catch basins located in a parking lot, or adjacent roadway.

- (2) All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX herein. No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except that the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation and plant materials.
- F. The preceding requirements of this § 240-53 shall not apply to parking lots constructed and in use prior to March 11, 1999, which conformed to all applicable regulations when established, except whenever there is:
- (1) An expansion of an existing parking lot containing 21 or more parking spaces; and/or
 - (2) An alteration of a structure, or a change or extension of a use created prior to March 11, 1999, which increases the parking requirements by five or more spaces according to the standards of § 240-56, Schedule of Off-Street Parking Requirements;

The entire parking lot shall be brought into compliance with § 240-53 herein; and the front yard landscaped setback requirement, if any, in accordance with the applicable zoning district bulk regulations. For the purpose of this subsection only, a development containing several different business enterprises sharing a common parking lot or lots shall be considered to be one use.

- (3) Reduction of parking and/or landscape buffers for parking lots created prior to March 11, 1999. The number of parking spaces required in § 240-56 may be reduced by the number of spaces lost to the installation of landscape buffers and traffic islands. Alternatively or in addition thereto, landscape buffers and islands may be reduced sufficient to ensure the creation of a functional, attractive parking lot, subject to approval of site plan review. This provision shall only apply to parking lots subject to § 240-53F herein. [Amended 3-11-1999 by Order No. 99-056]

§ 240-54. Location of parking lot in relationship to buildings. [Amended 3-11-1999 by Order No. 99-056]

Parking lots shall be located to the rear or side of a building unless such location would have an adverse environmental impact or is infeasible due to configuration of the site.

§ 240-55. Conflicting provisions.

Any specific provision in any other section of this chapter relating to parking shall prevail over the provisions of this section.

§ 240-56. Schedule of Off-Street Parking Requirements. [Amended 11-5-1988 by Art. 1]

The following standards represent the minimum parking requirements to be applied as provided for herein:

Use	Required Spaces
Attached dwelling units (D.U.)	1.5/D.U.+ 1 visitor space/10 required D.U. spaces
Guesthouse, lodging house, group accommodation, bed-and-breakfast	1.2/bedroom
Hotel/motel guest units	1.2/guest unit + 1/every 2 employees on maximum shift
Nursing homes/hospitals	1/every 3 beds
Industry, warehousing, storage, distribution, wholesaling	1/700 sq. ft. gross floor area or 1/every 1.3 employees on maximum shift, whichever is greater
Retail, consumer service	1/200 sq. ft. gross floor area + 1/separate enterprise
Office, professional, administrative, banks	1/300 sq. ft. gross floor area + 1/separate suite
Restaurants, licensed common victualer or purveyor of food ready to be consumed on or off premises	1/every 3 seats + 1/every 2 employees + 5/take-out area
Places of public assembly	1/every 3 persons capacity
Bowling alley	4/alley
Tennis, handball and racquetball courts	3/court, except 0 when a single court is located as accessory to a single-family dwelling
Laundromats	1/every 4 machines
Gas/service stations	3/service bay or 1/100 sq. ft. gross floor area, whichever is greater
All other uses	As determined by the Building Commissioner

§ 240-57. Circumstances warranting reduction of requirements. [Amended 11-5-1988 by Art. 1]

The Zoning Board of Appeals may reduce the requirements of this article by the granting of a special permit only if lesser off-street parking is shown to be adequate given such special circumstances as:

- A. Use of a common parking area by different uses having different peak hours of demand.
- B. Age or other characteristics of occupants which reduce auto usage.
- C. Characteristics of use invalidating normal methods of calculating parking demand.
- D. Supplementary parking provided off premises.

§ 240-58. Reduction of parking within the MA-1 and MA-2 Business Districts. [Added 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039; amended 11-15-2001 by Order No. 2002-029]

- A. Within the MA-1 and MA-2 Business Districts, a permitted use can be changed to another permitted use, and a use can be intensified, without increasing the required off-street parking requirements of § 240-56, Schedule of Off-Street Parking Requirements, herein, provided that as of September 15, 2001, there is:
 - (1) No increase in gross square footage of the building; and
 - (2) No reduction in existing parking spaces required pursuant to § 240-56; and
 - (3) There is no added outdoor use requiring the provision of parking according to § 204-56, except that no parking spaces shall be required for outdoor dining on both public and private property; except
 - (4) That in the MA-1 Business District, the following requirements shall apply to apartments:
 - (a) One parking space per one-bedroom apartment unit;
 - (b) Two parking spaces per apartment unit with two bedrooms.
- B. Within the MA-1 Business District, parking spaces shall be provided for new and/or expanded building area, and for new and/or expanded outdoor uses, as follows:
 - (1) Fifty percent of the spaces required under § 240-56 for all uses other than apartments.
 - (2) Parking spaces requirements for apartments shall be according to Subsection A(4) above.
- C. The Zoning Board of Appeals may by special permit, further reduce the parking required within the MA-1 Business District as follows:
 - (1) Off-site parking. Parking requirements may be satisfied if an off-street municipal parking lot of 20 spaces or more exists within 500 feet of the proposed use.

ARTICLE VII
Sign Regulations

§ 240-59. Statement of intent.

The provisions of this article establish the comprehensive regulations, conditions and limitations under which signs are permitted in the Town of Barnstable. It is intended that these regulations shall be held to be the minimum regulations necessary for the protection of the visual environment of the Town and the public safety, convenience and welfare and shall be narrowly construed and strictly applied in favor of the public interest to those ends.

§ 240-60. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ABANDONED SIGN — A sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product or activity and/or for which no legal owner can be found.

ANIMATED SIGN — Any sign which uses movement or change of lighting to depict action or to create a special effect or scene.

AREA (OF A SIGN) — (See § 240-62 herein).

BANNER — A sign made of fabric or any nonrigid material with no enclosing framework.

BILLBOARD — (See "off-premises sign.")

BUILDING COMMISSIONER — The Building Commissioner of the Town of Barnstable or his designee.

BUILDING SIGN — A sign affixed to and wholly supported by an exterior wall of a building or structure.

BUSINESS AREA SIGNS — An off-premises sign intended to direct the motoring public to specific commercial areas only, and not to include individual businesses.

CANOPY OR ARCADE SIGN — A wall-mounted sign attached to or constructed on the face of a permanent roofed structure covering an area customarily used for pedestrian circulation.

CHANGEABLE-COPY SIGN — A sign that is designed so that characters, letters or illustrations can be changed or rearranged either manually or automatically without altering the face or the service of the sign.

CONSTRUCTION SIGN — A temporary sign identifying an architect, contractor, subcontractor, material supplier or others participating in the construction on the property on which the sign is located.

DIRECT LIGHTING — Illumination by means of an external source.

DIRECTIONAL/INFORMATION SIGN — An on-premises sign identifying a premises or activity conducted upon such premises, and providing direction for the safe and efficient flow of vehicular or pedestrian traffic to such activity or premises. Directional signs shall include signs marking entrances, exits, parking areas, loading areas or other operational features of the premises.

DISCONTINUED SIGN — (See "abandoned sign.")

DOUBLE-FACED SIGN — A sign with two faces or panels, neither of which is visible at the same time and are directly back to back as opposed to a V-shaped sign.

ELECTRONIC MESSAGE CENTER — A sign on which the copy changes automatically on a lampbank or through mechanical means, e.g., electrical or electronic time-and-temperature units.

EXTERNALLY ILLUMINATED SIGN — A sign whose illumination is derived entirely from an external artificial source.

FACADE — The entire building front, including the parapet.

FLASHING SIGN — A sign which contains an intermittent or sequential flashing light source used primarily to attract attention. This does not include changeable-copy signs, animated signs or signs which, through reflection or other means, create an illusion of flashing or intermittent light. (Compare "animated sign.")

FREESTANDING SIGN — A sign supported upon the ground by poles or braces and not attached to any building.

FRONTAGE — The length of the property line of any one premises along a public right-of-way on which it borders.

GOVERNMENT SIGN — Any temporary or permanent sign erected and maintained by the Town, county, state or federal government for traffic direction or for designation of or direction to any school, hospital, historic site or public service, property or facility.

HEIGHT (OF A SIGN) — The vertical distance measured from the highest point of the sign to the average ground grade beneath the sign.

IDENTIFICATION SIGN — A sign whose copy is limited to the name and address of the building, institution or person and/or activity or occupation being identified.

ILLEGAL SIGN — A sign which does not meet the requirements of this chapter and which has not received legal nonconforming status.

INDIRECT LIGHTING — Illumination by means of a concealed light source, whereby all incandescent or fluorescent devices are shielded from view by opaque or translucent materials, and including reflected lighting.

INTERNALLY ILLUMINATED SIGN — Illumination by means of a light source completely enclosed by the sign panel(s).

INTERMITTENT LIGHTING — (See "flashing sign.")

MAINTENANCE (OF A SIGN) — The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

MENU SIGNS — The menu normally presented at tableside.

MULTIPLE-FACED SIGNS — Signs containing more than two faces or panels.

NONCONFORMING SIGN — Sign which was erected legally, but which does not comply with subsequently enacted regulations.

OFF-PREMISES SIGN — A sign structure advertising an establishment, merchandise, service or entertainment which is not sold, provided, manufactured or furnished at the property on which said sign is located, e.g., "billboards," "outdoor advertising" or "off-site signs."

ON-PREMISES SIGN — A sign which pertains to the use of the premises on which it is located and maintained.

PAINTED WALL SIGN — A sign which is applied with paint or similar substance on the face of a wall; such sign shall be considered a wall sign for calculation purposes.

PORTABLE SIGN — Any sign designed to be moved easily and not permanently affixed to the ground or to a structure or building.

PRIVATE WAY — For the purposes of this Article VII, a private way shall be considered a public way. (See "public way.")

PROJECTING SIGN — A sign other than a flat wall sign which is attached to and projects from a building wall or other structure not specifically designed to support the sign and is not parallel to the structure to which it is attached.

PUBLIC SERVICE INFORMATION SIGN — Any sign intended exclusively to promote items of general interest to the community, such as time, temperature, date, atmospheric conditions, news or travel control.

PUBLIC WAY — Any roadway over which everyone has rights to pass, including Town ways and private ways.

REAL ESTATE SIGN — A temporary sign advertising real estate upon which the sign is located as being for rent, lease or sale.

ROOF SIGN — Any sign erected upon a roof and wholly or partially supported by the sign structure placed upon the roof.

ROTATING SIGN — Any sign or device which has any visible moving part, visible revolving part, or visible mechanical movement but not including methods of changing copy.

SIGN — Any permanent or temporary structure, light, letter, word, model, banner, pennant, insignia, trade flag, representation or any other device which is used to advertise, inform or attract the attention of the public and which is designed to be seen from outside a building, including all signs in windows or doors but not including window displays of merchandise.

SPECIAL EVENT SIGN — A temporary sign advertising or pertaining to any civic, patriotic or special event of general public interest taking place within the Town.

STREET BANNER SIGN — Any banner which is stretched across and hung over a public right-of-way.

SUBDIVISION IDENTIFICATION SIGN — A freestanding or wall sign identifying a recognized subdivision, condominium complex or residential development.

TEMPORARY SIGN — A sign not constructed or intended for long-term use.

UNDER-CANOPY SIGN — A directional sign suspended beneath a canopy, ceiling, roof or marquee.

V-SHAPED SIGN — A sign with two faces or panels not supported by one common structural member and which faces are not back-to-back.

WALL SIGN — A sign attached parallel to and extending not more than 18 inches from the wall of a building, including painted signs, individual lettered signs, cabinet signs and signs on a mansard.

WINDOW SIGN — A sign installed inside a window and intended to be viewed from the outside.

§ 240-61. Prohibited signs.

The following signs shall be expressly prohibited in all zoning districts, contrary provisions of this chapter notwithstanding:

- A. Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, except official flags of nations or administrative or political subdivisions thereof.
- B. Any sign which incorporates any flashing, moving or intermittent lighting.
- C. Any display lighting by strings or tubes of lights, including lights which outline any part of a building or which are affixed to any ornamental portion thereof, except that temporary traditional holiday decorations of strings of small lights shall be permitted between November 15 and January 15 of the following year. Such temporary holiday lighting shall be removed by January 15.
- D. Any sign which contains the words "Danger" or "Stop" or otherwise presents or implies the need or requirement of stopping or caution, or which is an imitation of, or is likely to be confused with any sign customarily displayed by a public authority.
- E. Any sign which infringes upon the area necessary for visibility on corner lots.
- F. Any sign which obstructs any window, door, fire escape, stairway, ladder or other opening intended to provide light, air or egress from any building.
- G. Any sign or lighting which casts direct light or glare upon any property in a residential or professional residential district.

- H. Any portable sign, including any sign displayed on a stored vehicle, except for temporary political signs.
- I. Any sign which obstructs the reasonable visibility of or otherwise distracts attention from a sign maintained by a public authority.
- J. Any sign or sign structure involving the use of motion pictures or projected photographic scenes or images.
- K. Any sign attached to public or private utility poles, trees, signs or other appurtenances located within the right-of-way of a public way.
- L. A sign painted upon or otherwise applied directly to the surface of a roof.
- M. Signs advertising products, sales, events or activities which are tacked, painted or otherwise attached to poles, benches, barrels, buildings, traffic signal boxes, posts, trees, sidewalks, curbs, rocks and windows regardless of construction or application, except as otherwise specifically provided for herein.
- N. Signs on or over Town property, except as authorized by the Building Commissioner for temporary signs for nonprofit, civic, educational, charitable and municipal agencies.
- O. Signs that will obstruct the visibility of another sign which has the required permits and is otherwise in compliance with this chapter.
- P. Off-premises signs except for business area signs as otherwise provided for herein.
- Q. Any sign, picture, publication, display of explicit graphics or language or other advertising which is distinguished or characterized by emphasis depicting or describing sexual conduct or sexual activity as defined in MGL Ch. 272, § 31, displayed in windows, or upon any building, or visible from sidewalks, walkways, the air, roads, highways, or a public area.

§ 240-62. Determination of area of a sign.

- A. The area of the sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed.
- B. The area of signs painted upon or applied to a building shall include all lettering, wording and accompanying designs or symbols together with any background of a different color than the finish material or the building face.
- C. When a sign consists of individual letters or symbols attached to or painted on a surface, wall or window, the area shall be that of the smallest rectangle which encompasses all of the letters and symbols.
- D. Only one side of a double-faced sign shall be counted in computing the area of that sign.

- E. For the purposes of these regulations, the area of a building face or wall shall be calculated by using a height of no more than 10 feet from the ground multiplied by the width of the building front.

§ 240-63. Signs in residential districts. [Amended 2-20-1997]

In residential districts, only the following signs are permitted:

- A. One sign displaying the street number and identifying the premises not to exceed two square feet in area. The street number must be approved by the Engineering Department in conformance with the Town's regulations governing numbering of buildings.¹⁴
- B. One sign no larger than four square feet in area shall be allowed which displays the name of the house or the name of the family residing therein.
- C. One sign not to exceed two square feet in area shall be permitted for a professional office or home occupation for which a special permit or variance has been granted by the Board of Appeals.
- D. One temporary sign not to exceed four square feet in area advertising property for sale, lease or rent. Such signs must be removed within 10 days of transfer of title or signing of lease or rental agreement.
- E. Where a legal nonconforming business exists within a residential district, one sign may be permitted by the Building Commissioner if it is determined that the appearance, placement, size and lighting of the proposed sign will not be detrimental to the residential character or visual quality of the area. In no instance shall such signs exceed eight feet in height or eight square feet in area.
- F. Permits may be posted at construction sites as required by state or Town regulations, except that in no instance shall they be attached to trees or utility poles.
- G. One identification sign not to exceed 12 square feet in area may be permitted at any public entrance to a subdivision or multifamily development.
- H. Illuminated signs within residential zones require the approval of the Building Commissioner, and may be permitted if the applicant can demonstrate that the proposed illumination will not intrude upon adjacent residential areas, will not be illuminated except during actual hours of business, and will not cause traffic hazards.
- I. One identifying sign for lodging houses, bed-and-breakfast or similar identification not to exceed four square feet in area.

§ 240-64. Signs in PR Professional Residential District.

- A. One sign giving the name of the occupant or other identification of a permitted use in a professional residential zone may be permitted. Such signs shall be no more than 12 square feet in area and shall not extend more than eight feet above the ground.

14. Editor's Note: See Ch. 51, Buildings, Numbering of.

B. Any illuminated sign must comply with the provisions of § 240-63 herein.

§ 240-65. Signs in B, BA, UB, HB, HO, S&D and SD-1 Districts. [Amended 8-15-1991; 7-15-1999]

- A. Each business may be allowed a total of two signs.
- B. The maximum height of any freestanding sign will be 10 feet, except that a height of up to 12 feet may be allowed by the Building Commissioner if it is determined that the additional height will be in keeping with the scale of the building and will not detract from the appearance or safety of the area and will not obscure existing signs that conform to these regulations and have a Town permit.
- C. The total square footage for all signs of each business shall not exceed 10% of the area of the building wall facing a public way or 100 square feet, whichever is the lesser amount.
- D. Only one freestanding sign is allowed per business, which may not exceed half the allowable size as permitted in this section.
- E. One projecting overhanging sign may be permitted per business in lieu of either a freestanding or wall sign, provided that the sign does not exceed six square feet in area, is no higher than 10 feet from the ground at its highest point and is secured and located so as to preclude its becoming a hazard to the public. Any sign projecting onto Town property must have adequate public liability insurance coverage, and proof of such insurance must be provided to the Building Commissioner prior to the granting of a permit for such sign.
- F. Incidental business signs indicating the business, hours of operation, credit cards accepted, business affiliations, "sale" signs and other temporary signs shall be permitted so long as the total area of all such signs does not exceed four square feet and is within the allowable maximum square footage permitted for each business.
- G. When a business property is located on two or more public ways, the Building Commissioner may allow a second freestanding sign, so long as the total square footage of all signs for a single business does not exceed the provisions of this section.
- H. When two or more businesses are located on a single lot, only one freestanding sign shall be allowed for that lot, except as provided in this section, in addition to one wall or awning sign for each business. If approved by the Building Commissioner, the one freestanding sign can include the names of all businesses on the lot.
- I. One awning or canopy sign may be permitted per business in lieu of the allowable wall or freestanding sign, subject to approval by the Building Commissioner.
- J. In addition to the allowable signs as specified in this section each restaurant may have a menu sign or board not to exceed three square feet.
- K. In lieu of a wall sign, one roof sign shall be permitted per business, subject to the following requirements:

- (1) The roof sign shall be located above the eave, and shall not project below the eave, or above a point located $\frac{2}{3}$ of the distance from the eave to the ridge.
- (2) The roof sign shall be no higher than $\frac{1}{5}$ of its length.

§ 240-66. Signs in industrial districts.

The provisions of § 240-65 herein shall apply, except that the total square footage of all signs, while normally not to exceed 100 square feet, may be allowed up to 200 square feet if the Building Commissioner finds that larger signs are necessary for the site and are within the scale of the building and are otherwise compatible with the area and in compliance with the provisions and intent of these regulations.

§ 240-67. Signs in VB-A, and VB-B Districts.

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of all signs is eight feet, except that the Building Commissioner may allow up to 12 feet if he finds that such height is necessary for the site and is compatible with the appearance, scale and character of the area.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 10 square feet, except that the Building Commissioner may grant up to 24 square feet if he finds that the size is necessary for the site and that the larger size is in scale with the building and does not detract from the visual quality or character of the area.

§ 240-68. Signs in MB-A1, MB-A2, MB-B and BL-B Districts.

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of signs shall not exceed eight feet.
- B. Freestanding signs shall not exceed 24 square feet in area.
- C. The total square footage of all signs shall not exceed 50 square feet.

§ 240-69. Gasoline station signs.

- A. In addition to the two allowable signs as specified in § 240-65 herein each gas pump may have signage not to exceed 12 inches by eight inches indicating the name or type of gasoline and its price and other information as may be required by federal, state or Town regulation.
- B. Each gas station or garage may divide the one allowable attached wall sign into no more than four separate signs affixed to and parallel to the wall indicating the separate

operations or departments of the business, provided that the total area of the separate signs shall not exceed maximum permitted areas specified in § 240-65 herein.

- C. If the business is an approved inspection station, it may additionally have a sign indicating that fact as part of its permitted building or freestanding sign, except that the total square footage of all signs must not exceed the maximum permitted in § 240-65 herein.
- D. Temporary or portable signs of any and every type are specifically prohibited.

§ 240-70. Shopping center signs.

Each business in a shopping center is allowed one attached building sign and one portion of a common freestanding sign. If the shopping center has two or more public entrances which are at least 500 feet apart, a second freestanding sign may be permitted if the Building Commissioner finds that an additional sign is necessary, will not represent a visual hazard, and will not detract from the visual quality or character of the area.

§ 240-71. Signs in MA-1, MA-2 and OR Districts. [Amended 11-15-2001 by Order No. 2002-029]

The provisions of § 240-65 herein shall apply except that:

- A. The maximum allowable height of all signs on buildings shall be 12 feet, and the maximum height of a freestanding sign shall be eight feet.
- B. The maximum square footage of all signs shall be 50 square feet or 10% of the building face, whichever is less.
- C. The maximum size of any freestanding sign shall be 12 square feet.
- D. Temporary street banners may be permitted in the MA-1 Business District only, for the purpose of informing the general public of community events and activities, with approval of the Town Manager. Street banners shall be hung in prescribed locations, securely fastened to buildings, maintain a minimum height of 16 feet above the street, be constructed of durable materials, used solely for community events in the district, and remain in place for no more than three weeks prior to the event and be removed within one week after the event.

§ 240-72. Signs in B-1, O-1, O-2 and O-3 Districts. [Amended 6-28-2001 by Order No. 2001-036; 7-19-2001 by Item Nos. 2001-037, 2001-038, 2001-039]

The provisions of § 240-65 shall apply except that:

- A. The maximum allowable height of all signs on buildings shall be 12 feet, and the maximum allowable height of a freestanding sign is eight feet.
- B. The maximum square footage of signs shall be 75 square feet or 10% of the building face, whichever is less.

- C. The maximum size of any freestanding sign shall be 18 square feet.

§ 240-73. Construction signs.

- A. When a building permit has been issued for the construction, alteration or repair of a structure, and all other required permits have been obtained, contractors or architects shall display a sign on the site while approved work is going on.
- B. No contractor or architect shall display more than one sign on any building at any given time.
- C. No sign shall be larger than 24 square feet in area, nor more than five feet tall.
- D. The total area of all construction signs displayed at a site at any given time shall not exceed 24 square feet.

§ 240-74. Temporary signs.

Temporary signs and special sale signs may be permitted in all districts subject to the following requirements:

- A. The total area of all temporary signs allowed in this section shall not exceed 20% of the glass area of the window in which the sign is placed.

§ 240-75. Directional or safety signs.

In addition to other allowable signs, directional, warning or traffic signs necessary for the safety and direction of residents, employees, customers and visitors may be allowed as follows:

- A. Such signs shall not exceed one square foot in area, nor be more than three feet high.
- B. No more than four such signs will be allowed per site.
- C. The Building Commissioner may grant exceptions from the provisions of this subsection on a case-by-case basis if he finds that the site requires more or larger or higher directional or safety signs, and that such signs will not conflict with the visual quality and character of the area nor lead to clutter or confusion.

§ 240-76. Business area signs.

Business area signs may, at the discretion of the Building Commissioner, be permitted off-premises in remote areas, provided that the owner of record of the land on which the sign is placed has given written permission and that such signs shall be no more than eight square feet in area and shall identify the business area only, and not individual businesses.

§ 240-77. Movie houses and places of entertainment.

- A. Movie houses and places of entertainment may use one of their signs as a display sign indicating movie titles, their ratings, the time(s) of showing, or in the case of places of entertainment, the names of current and/or next-appearing performers so long as they meet all dimensional requirements.
- B. When a movie house or place of entertainment is one of two or more businesses on a single lot, the Building Commissioner may allow two freestanding signs, one of which may be a display sign, so long as the total area of both signs combined does not exceed the maximum square footage allowed in § 240-65 herein.

§ 240-78. Illumination. [Amended 11-15-2001 by Order No. 2002-029]

- A. Illuminated signs will normally not exceed fifty-foot lamberts (or equivalent measurement) of intensity. Additional intensity may be permitted by the Building Commissioner if it is determined that additional intensity is necessary and that it will not detract from the visual quality or character of the area.
 - (1) Internally illuminated signs shall not be permitted in the following zoning districts:
 - (a) MA-1 Business District.
 - (b) MA-2 Business District.
 - (c) OR Office District.
 - (d) O-1, O-2 and O-3 Office Districts.
 - (2) Within the B-1 Business District, internally illuminated signs are permitted along Barnstable Road only.
- B. The light from any sign shall be so shaded, shielded or directed or shall be maintained at a sufficiently low level of intensity and brightness so that it shall not adversely affect neighboring premises or the safe vision of operators of vehicles moving on public roads and highways.
- C. All illuminated signs shall be so shaded, shielded or directed that they will not reflect or shine on or into residential structures to an extent that would constitute a nuisance or a disruption of the residential character of the area.

§ 240-79. Signs in Old King's Highway Historic District.

- A. The dimensional requirements of these regulations shall apply to all portions of the Town.
- B. Within the boundaries of the Old King's Highway Historic District, the Historic District's Regional Committee shall exercise the duties of the Building Commissioner for the purposes of these regulations, except that the Building Commissioner shall be informed of all actions taken by the Regional Committee.

- C. The Building Commissioner and the Chairman of Regional Committee shall consult with each other frequently regarding the administration of these regulations, and shall work together to establish common sign and architectural standards whenever possible.

§ 240-80. Relocating or changing signs.

- A. Any sign that is moved to another location, either on the same or other premises shall require a permit.
- B. Any change in the width, length, height, color, wording, materials, illumination or clearance between the bottom of the sign and the ground, other than authorized in the permit, will require a new permit prior to making any such changes.

§ 240-81. Transfer of permits prohibited.

Permits cannot be transferred, and the new owner of a business for which there are permitted signs must request a permit for those signs, which shall be granted if all signs are found to be in compliance with these regulations.

§ 240-82. Protection of subsequent purchasers.

Any vendor or lessor who sells or leases any real property which includes a nonconforming sign or signs has a duty to disclose to his vendee or lessee the time remaining in the amortization or transition period applicable to the sign or signs in question.

§ 240-83. Illegal signs.

- A. Order to remove. Following the procedures described in these regulations for abandoned signs, the Building Commissioner can establish an order of removal for illegal signs which may then be removed by the Building Commissioner following due procedures of law, with costs assessed to the permit holder or property owner.
- B. New signs at sites of illegal signs. No sign permit shall be granted for a new sign to be located on a building or on a lot where one or more illegal signs exist.

§ 240-84. Abandoned signs.

- A. Signs which have been abandoned due to a closing of a business, a change in business name or for any other reason which renders the sign not applicable to the property involved shall be removed by the permit holder or the owner of the building or premises within 14 days from the date of the action that caused the sign to be considered abandoned.
- B. A condition of approval for all sign permits shall be that permit holders or owners of the building or premises shall, at his or her own expense, remove all abandoned signs.

- C. New signs for a building or property on which an abandoned sign is located shall not be approved until the abandoned sign is removed.
- D. The Building Commissioner shall determine when a sign is abandoned. Notice shall be sent to the permit holder and to the property owner prior to administrative action.

§ 240-85. Permit required; identification stickers.

- A. All signs regulated by this chapter require a permit from the Building Commissioner, with the exception of residential signs described in § 240-63A and B herein, so long as the house number has been approved by the Engineering Department.
- B. Failure to obtain a permit shall make the sign illegal and subject to the penalty provisions of § 240-86 herein.
- C. All signs regulated by this chapter shall be marked with an identification sticker supplied by the Building Commissioner. Failure to display this sticker as issued by the Town shall constitute a violation of these regulations and be subject to the provisions of § 240-86 herein.

§ 240-86. Violations and penalties.

- A. The Building Commissioner may issue citations for violations of these regulations.
- B. A failure to respond to properly issued citations or the issuance of three or more citations for a sign shall be construed as a major violation subject to a fine of not more than \$100. Each day that such violation continues shall constitute a separate offense.
- C. Continued violation, even with payment of penalties, for a period of 60 days, shall be grounds for removal of the sign(s) in question, following the procedures for illegal signs.
- D. Applicants for signs who have previously had penalties for illegal signs may be required to post a deposit of not more than \$500 per sign for new permits. The Building Commissioner shall review the sign one year from the issuance of a permit and either issue a certificate of compliance, release the deposit, or order necessary corrective action utilizing the deposited funds, with any remaining funds and a full accounting of monies spent returned to the applicant.

§ 240-87. Safety and maintenance.

- A. All signs, together with their supporting structures, must be kept properly maintained, repaired, and in proper condition. All signs and the grounds about them shall be kept free from all rubbish and other objectionable material.
- B. Failure to comply with these provisions shall be grounds for a citation.
- C. If the Building Commissioner finds that a sign is unsafe or otherwise improperly maintained, he shall issue a written notice to that effect to the permit holder and the property owner. If the specified conditions are not corrected, the Building Commissioner

is authorized to remove or repair the sign, all costs of which shall be assessed to the permit holder or property owner, including an administrative fee of \$50. If public safety is involved, the Building Commissioner may take immediate action.

§ 240-88. Appeals.

Any individual aggrieved by a decision of the Building Commissioner may appeal to the Barnstable Board of Appeals, as provided under Chapter 40A of the General Laws.

§ 240-89. Enforcement. [Amended 10-17-2002]

- A. The provisions of these regulations shall be enforced by the Building Commissioner.
- B. Citations, as specified in § 240-85 may be issued by the Building Commissioner.

ARTICLE VIII

Nonconformities

[Amended 11-7-1987 by Art. 8; 11-2-1995 by Order No. 95-198]

§ 240-90. Intent.

It is the intent of this section to protect property rights of owners of preexisting legally created nonconforming lots, uses and buildings or structures and to provide regulation of changes or expansion of preexisting nonconforming structures, building and uses.

§ 240-91. Nonconforming lot.

- A. Separate lot exemption. Any increase in area, frontage, width, yard or depth requirement of this chapter shall not apply to a lot for single- or two-family residential use which at the time of recording or endorsement:
 - (1) Was not held in common ownership with any adjoining land; and
 - (2) Had a minimum of 5,000 square feet of area and 50 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
 - (3) Conformed to the existing zoning if any when legally created; and
 - (4) Was separately owned at the time of every zoning change which made it nonconforming.
- B. Common lot protection.
 - (1) Any increase in the area, frontage, width, yard or depth requirement of this chapter shall not apply for a period of five years from the effective date of the change, to a lot for single- or two-family residential use that:

- (a) Is held in common ownership with not more than two adjoining lots; and
 - (b) Had a minimum of 7,500 square feet in area and 75 feet of frontage or the minimum frontage requirement for the zoning district in which it is located; and
 - (c) Was recorded or endorsed on a plan that conformed to zoning when legally created; and
 - (d) Conformed to applicable zoning requirements as of January 1, 1976.
- C. The protection afforded by this subsection shall become vested upon the sale or transfer of the lot so protected into ownership separate from that of adjoining lots or the building thereon of a residence.
- D. Approval-not-required plan protection. Any change in uses permitted under this chapter shall not apply to any lot created by a plan endorsed by the Planning Board as a plan not requiring approval under the Subdivision Control Law for such period of three years from the date of endorsement, as provided by MGL Ch. 40A, § 6.
- E. Subdivision plan protection. Any change in this chapter shall not apply to land shown on a plan under the Subdivision Control Law by a duly submitted and endorsed definitive subdivision plan, or a preliminary plan followed within seven months by a definitive plan, for such period of eight years from the date of endorsement, as provided by MGL Ch. 40A, § 6. Any legally created lot with a recorded release from covenant of the Planning Board that has been sold or transferred into separate ownership and control from any adjoining lots within eight years from the endorsement of the original subdivision plan shall be exempt from any dimensional or bulk zoning changes and shall not lose its status as a single buildable lot under zoning.
- F. Merged lots. Except as otherwise provided herein, lawfully nonconforming lots that are adjoining and held in common ownership, or under the control of the same owner, shall be treated so as to conform so far as possible with the minimum area requirement of the zoning district in which they are located. No lot so merged, or portion thereof, may be changed or transferred in any manner that will increase the degree of nonconformity unless a special permit has first been obtained from the Zoning Board of Appeals. No such special permit may create any additional buildable lot(s).
- G. Resource Protection Overlay District. **[Amended 10-26-2000]**
 - (1) Any increase in area, frontage, width, yard or depth requirements of the Resource Protection Overlay District shall not apply to a lot for single- or two-family residential use which immediately prior to November 16, 2000, either:
 - (a) Conformed to the applicable bulk requirements of this chapter immediately prior to November 16, 2000; or
 - (b) Immediately prior to (on the effective date of this chapter,) was protected from the applicable bulk requirements of this subsection by the provisions of § 240-91A, B, C, D, or E of this chapter.

- (2) This protection afforded by this subsection shall be permanent.

§ 240-92. Nonconforming buildings or structures used as single- and two-family residences.

A preexisting nonconforming building or structure that is used as a single- or two-family residence may be physically altered or expanded only as follows:

- A. As of right. If the Building Commissioner finds that:
 - (1) The proposed physical alteration or expansion does not in any way encroach into the setbacks in effect at the time of construction, provided that encroachments into a ten-foot rear or side yard setback and twenty-foot front yard setback shall be deemed to create an intensification requiring a special permit under Subsection B below; and
 - (2) The proposed alteration or expansion conforms to the current height limitations of this chapter.
- B. By special permit. If the proposed alteration or expansion cannot satisfy the criteria established in Subsection A above, the Zoning Board of Appeals may allow the expansion by special permit, provided that the proposed alteration or expansion will not be substantially more detrimental to the neighborhood than the existing building or structure.

§ 240-93. Nonconforming buildings or structures not used as single- or two-family dwellings.

- A. As of right.
 - (1) The normal and customary repair and maintenance of a preexisting nonconforming building or structure not used as a single or two-family dwelling is permitted as of right.
 - (2) The alteration and expansion of a preexisting nonconforming building or structure, housing a conforming use, is permitted as of right, provided that the alteration or expansion does not increase or intensify the degree of the preexisting nonconformity of the building or structure, and that the alteration or expansion conforms in all other respects with all applicable requirements of this chapter.
- B. By special permit. Alterations or expansions in a preexisting nonconforming building or structure that do not meet the provisions of Subsection A shall be permitted only by a special permit from the Zoning Board of Appeals. In granting such special permit, the Board must find that the proposed repairs, alterations and/or expansion are not substantially more detrimental to the surrounding neighborhood. If the building or structure houses a nonconforming use, the provisions of § 240-94 shall also apply.

§ 240-94. Nonconforming use. [Amended 3-11-1999 by Order No. 99-056]

A preexisting nonconforming use shall be limited in the extent it may expand or intensify. A preexisting nonconforming use may be changed to a principal permitted use as of right. A preexisting nonconforming use may be changed to a conditional use by special permit as provided for within the zoning district in which it is located, or to another nonconforming use as provided for herein.

A. Change of a nonconforming use to another nonconforming use. A preexisting nonconforming use may be changed to another nonconforming use only by special permit from the Zoning Board of Appeals. In granting a special permit for the change of a nonconforming use, the Board must find that the proposed nonconforming use is no more detrimental to the neighborhood and that all of the following requirements are met:

- (1) The applicant has received all necessary approvals from the Board of Health.
- (2) The proposed nonconforming use:
 - (a) Requires no more parking than the previous use;
 - (b) Does not generate more traffic than the previous use, as measured by the Institute of Transportation Engineers Trip Generation Handbook or other sources acceptable to the Zoning Board of Appeals, nor does it cause Town expenditures to address traffic mitigation measures;
 - (c) Does not result in an increase of on-site and off-site noise, dust, and odors;
 - (d) Does not result in an increase in the hours of operation or in the number of tenants or employees;
 - (e) Does not expand the gross floor area of the nonconforming use, except as may be provided in § 240-93B, nor does it increase the number of nonconforming uses on a site;
 - (f) Is on the same lot as occupied by the nonconforming use on the date it became nonconforming; and
 - (g) Is not expanded beyond the zoning district in existence on the date it became nonconforming.

B. Expansion of a preexisting nonconforming use. A preexisting nonconforming use shall not be expanded and/or intensified except by special permit from the Zoning Board of Appeals. In granting a special permit for expansion of a preexisting nonconforming use, the Board must find that the proposed expansion, and/or intensification will not be more detrimental to the neighborhood and that the following requirements are met:

- (1) Any proposed expansion of the use shall conform to the established setbacks for the zoning district in which it is located, or such greater setbacks as the Zoning Board of Appeals may require due to the nature of the use and its impact on the neighborhood and surrounding properties.

- (2) The proposed use and expansion is on the same lot as occupied by the nonconforming use on the date it became nonconforming.
- (3) The proposed new use is not expanded beyond the zoning district in existence on the date it became nonconforming.
- (4) At the discretion of the Zoning Board of Appeals, improvements may be required in order to reduce the impact on the neighborhood and surrounding properties including but not limited to the following:
 - (a) Greater conformance of signage to the requirements of Article VII;
 - (b) The addition of off-street parking and loading facilities;
 - (c) Improved pedestrian safety, traffic circulation and reduction in the number and/or width of curb cuts;
 - (d) Increase of open space or vegetated buffers and screening along adjoining lots and roadways. The applicant shall demonstrate maximum possible compliance with § 240-53, Landscape Requirements for Parking Lots, Subsection F, if applicable.
 - (e) Accessory uses or structures to the principal nonconforming use may be required to be brought into substantial conformance with the present zoning.

§ 240-95. Reestablishment of damaged or destroyed nonconforming use, building or structure.

- A. The reestablishment of a lawful preexisting nonconforming use and/or building or structure which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted as of right, provided that the Building Commissioner has determined that all the following conditions are met:
 - (1) The reconstruction or repair will not increase the gross floor area or height of the building or structure beyond that which previously existed, nor increase the footprint of the structure;
 - (2) If the building's location on the lot is to be changed, it will change in a manner that will result in greater compliance with the bulk regulations established in the zoning district in which it is located; and
 - (3) The reconstruction or repair will not constitute an expansion or intensification of any nonconforming use.
 - (4) In the case of any use in which it would otherwise be required, the site plan review process has been followed.
- B. The preexisting nonconforming use and/or structure or building shall be discontinued unless a building permit has been applied for within two years from the date of damage or destruction, and construction is continuously pursued to completion.

§ 240-96. Variance situations.

Situations which exist pursuant to the duly authorized grant of a variance from the terms of this chapter as provided for in § 240-125B(3) and (5) shall not constitute nonconformities for the purposes of this chapter.

§ 240-97. Abandonment; nonuse.

Any lawful preexisting nonconforming use or building or structure or use of land which has been abandoned or not used for three years shall not thereafter be reestablished. This section shall not apply in cases of damage or destruction governed by § 240-95.

ARTICLE IX
Site Plan Review
[Added 11-7-1987 by Art. 1]

§ 240-98. Findings.

Developments designed to be used for business and professional offices, commercial establishments, industrial facilities, medical-service facilities, public recreational facilities and multiple-family dwellings, together with their associated outdoor areas for vehicular movement and parking, invite and accommodate varying degrees of open and continuous use by the general public. Owing to their physical characteristic and the nature of their operations, such developments may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of such developments and to minimize any harmful effects on surrounding areas.

§ 240-99. Purposes.

The provisions of this article are designed to assure that all development activities regulated by this article will be carried out so as to provide for and maintain:

- A. Protection of neighboring properties against harmful effects of uses on the development site;
- B. Convenient and safe access for fire-fighting and emergency rescue vehicles within the development site and in relation to adjacent streets;
- C. Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
- D. Satisfactory methods for drainage of surface water to and from the development site;
- E. Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishment(s) on the development site;

- F. Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment(s) on the development site; and
- G. Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site.

§ 240-100. Scope of application.

The provisions of this article shall apply to:

- A. Any construction, demolition, grading, clearing or other land development activity, except for improvements made as shown on a definitive subdivision plan approved by the Planning Board of the Town of Barnstable and minimal clearing necessary to accomplish soil test borings, percolation tests and similar site testing and investigation.
- B. Establishment of any new use or new construction of any building or structure, including any grading or land development activity except detached single-family and two-family dwellings and permitted accessory structures thereto. **[Amended 10-7-1993 by Order No. 94-015]**
- C. Any alteration, expansion, reconstruction or modification to the existing condition(s) of a structure or any change of use which would necessitate the provision of additional off-street parking, additional lot area or any other site alteration in order for such structure or use as so changed to comply with all requirements of this chapter.
- D. The construction or creation of any new parking lot or the expansion or redesign of any existing parking lot. **[Amended 2-22-1996 by Order No. 95-194]**
- E. The erection of any freestanding sign, except not to include directional signs.

§ 240-101. Site plan approval required.

- A. No building permit or occupancy permit shall be issued for any activity or use within the scope of § 240-100 herein unless a site plan has been approved therefor.
- B. No activity within the scope of § 240-100 herein shall be carried out without an approved site plan therefor. Any work done in deviation from an approved site plan shall be a violation of this chapter, unless such deviation is approved in writing by the Building Commissioner as being of no significant detriment to the achievement of any of the purposes set forth in § 240-99 herein.

§ 240-102. Contents of site plan.

- A. The site plan shall include one or more appropriately scaled maps or drawings of the property, drawn to an engineer's scale, clearly and accurately indicating such elements of the following information as are pertinent to the development activity proposed:

- (1) Legal description, Planning Board subdivision number (if applicable), Assessors' Map and parcel number and address (if applicable) of the property.
- (2) Name, address and phone number of the property owner and applicant, if different than the property owner.
- (3) Name, address, and phone number of the developer, contractor, engineer, other design professional and agent or legal representative.
- (4) Complete property dimensions, area and zoning classification of property.
- (5) Existing and proposed topographical contours of the property taken at two-foot contour intervals by a registered engineer or registered land surveyor.
- (6) The nature, location and size of all significant existing natural land features, including, but not limited to, tree, shrub, or brush masses, all individual trees over 10 inches in caliper, grassed areas, large surface rock in excess of six feet in diameter and soil features.
- (7) Location of all wetlands or water-bodies on the property and within 100 feet of the perimeter of the development activity.
- (8) The location, grade and dimensions of all present and/or proposed streets, ways and easements and any other paved surfaces.
- (9) Engineering cross sections of proposed new curbs and pavements, and vision triangles measured in feet from any proposed curb cut along the street on which access is proposed.
- (10) Location, height, elevation, interior and exterior dimensions and uses of all buildings or structures, both proposed and existing; location, number and area of floors; number and type of dwelling units; location of emergency exits, retaining walls, existing and proposed signs.
- (11) Location of all existing and proposed utilities and storage facilities including septic systems and any storage materials, truck loading and parking areas, tanks, garbage dumpsters and recyclable storage materials.
- (12) Proposed surface treatment of paved areas and the location and design of drainage systems with drainage calculations prepared by a registered civil engineer.
- (13) Complete parking and traffic circulation plan, if applicable, showing location and dimensions of parking stalls, dividers, bumper stops, required buffer areas and planting beds.
- (14) Lighting plan showing the location, direction and intensity of existing and proposed external light fixtures.
- (15) A landscaping plan showing the location, name, number and size of plant types, and the locations and elevation and/or height of planting beds, fences, walls, steps and paths.

- (16) A location map or other drawing at appropriate scale showing the general location and relation of the property to surrounding areas including, where relevant, the zoning and land use pattern or adjacent properties, the existing street system in the area and location of nearby public facilities.
 - (17) Location within an Historical District and any other designation as an historically significant property, and the age and type of each existing building and structure on the site which is more than 50 years old.
 - (18) Location of site with regard to the GP Groundwater Protection Overlay District and WP Well Protection Overlay District as shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map. [Amended 9-17-1998 by Order No. 99-012]
 - (19) Location of site with regard to flood areas regulated by § 240-34 herein.
 - (20) Location of site with regard to areas of critical environmental concern as designated by the Commonwealth of Massachusetts, Executive Office of Environmental Affairs.
- B. Additional information may be required by the Building Commissioner or his designee, as reasonably necessary, to make determinations required by this article.

§ 240-103. Site development standards. [Amended 11-15-2001 by Order No. 2002-029]

- A. A reasonable effort shall be made to conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.
- B. Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.
- C. The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.
- D. At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway and a line joining points along said lines 20 feet distant from their projected intersection.
- E. Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. In no case shall freestanding illumination devices be installed to a height exceeding 15 feet in a residential district. All illumination shall be directed and/or shielded so as not to shine beyond the perimeter of the site or interfere with traffic.

- F. All areas designed for vehicular use shall be paved with a minimum of either a three-inch bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick, cobblestone or gravel, as approved by the Town Engineer.
- G. All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-104 herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.
- H. All utility service transmission systems, including but not limited to electrical, telephone, cable and other communication lines, shall, whenever practicable, be placed underground or moved behind buildings.
- I. All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case, shall surface water runoff be drained directly into wetlands or water bodies. Drainage systems shall be designed to minimize the discharge of pollutants by providing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration. Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-year storm and shall be reviewed by the Town Engineer.
- J. In addition to the provisions of this section, all other applicable requirements of this chapter shall be complied with.
- K. Storage areas. Exposed storage areas, machinery, garbage dumpsters, recyclable storage, service areas, truck loading areas, utility buildings and structures shall be screened from view of abutting properties and streets using planting, fences and other methods compatible with this chapter. Garbage dumpsters shall be located in designated areas, and where feasible, shared with other uses.

§ 240-104. Minimum parking lot design standards.

(Editor's Note: See drawings at the end of this chapter.)

§ 240-105. Required procedures for site plan review.

- A. At least six copies are required of all site plan sheets, drawings and written information. Submissions shall be delivered to the Building Department.
- B. Within five working days of receiving a site plan, the Building Commissioner or his designee shall distribute copies of the site plan to the Department of Planning and Development, the Department of Public Works and the Board of Health.
- C. Upon receipt of a site plan from the Building Commissioner or his designee, the agencies as noted in Subsection B shall respond in writing, by notations on the site plan, or both, as to the propriety of the proposed development, within the context of each agency's

jurisdiction. Such response shall be made to the Building Commissioner or his designee within 10 working days of each agency's receipt of the site plan.

- D. The Building Commissioner or his designee may solicit the advice of any other Town agency or department he deems necessary to properly make the determinations required by this article.
- E. Site plans shall be reviewed for consistency with zoning and other applicable regulations and standards, and within 20 working days of receiving a site plan, the Building Commissioner or his designee, shall notify the applicant of any approval, conditional approval or disapproval, stating reasons.
- F. One copy of the approved site plan shall be provided each to the applicant, the Department of Planning and Development, the Department of Public Works and the Board of Health. One copy of the approved site plan shall remain in the records of the Building Department.
- G. Upon completion of all work, a letter of certification, made upon knowledge and belief according to professional standards, shall be submitted to the Building Commissioner or his designee by a registered engineer or registered land surveyor, as appropriate to the work involved, that all work has been done substantially in compliance with the approved site plan, except that the Building Commissioner or his designee may certify compliance.

ARTICLE X

Personal Wireless Communication

[Added 6-3-1999 by Order No. 99-074A]

§ 240-106. Purpose and intent.

It is the intent of this article to provide for the location and siting of wireless service communication facilities and their accessory structures in accordance with the Telecommunications Act of 1996, to provide for the orderly provision of facilities; ensure public safety; and to minimize adverse visual impacts upon both residential and nonresidential areas.

§ 240-107. Requirements for all personal wireless facilities in all zoning districts.

- A. Installation and construction of all personal wireless service facilities, including but not limited to antennas, mounts, equipment shelters and structures, shall be subject to Article IX Site Plan Review, and shall require issuance of a building permit.
- B. The applicant shall provide site plan review with evidence that they are a licensed carrier, authorized by the Federal Communications Commission (FCC) to construct and operate personal wireless services, and that the proposed transmitters are FCC regulated and approved.
- C. The structure to which any mount or antenna is attached is a legally built structure under zoning, or a preexisting, legal nonconforming structure.

- D. If the location is within a designated historic district, the applicant shall secure a certificate of appropriateness, to the extent required.
- E. Structural components including guy wire anchors and equipment shelters shall comply with all required setbacks of the zoning district.
- F. Any equipment or base receiver station, not located within an existing building or underground vault, shall be designed to fit in with traditional Cape Cod architecture styles and materials, or shall be screened from view.

§ 240-108. Antennas permitted by special permit in all zoning districts.

Except where permitted as of right in § 240-109 below, in all zoning districts, an antenna mounted or located on any existing building or structure other than a communications tower may be permitted by special permit from the Zoning Board of Appeals, provided that no antenna exceeds the height of the existing structure by more than 12 feet, unless the Board finds that additional height is necessary to provide coverage, and the additional height will not be visually intrusive upon the surrounding area.

§ 240-109. Antennas permitted as of right in all zoning district.

Antennas permitted as of right in all zoning district shall be as follows:

- A. An antenna and/or tower used in accordance with the terms of an amateur radio service license issued by the Federal Communications Commission provided that any facility tower is not licensed or used for any commercial use, subject to all the requirements of § 240-8, Exempt uses.
- B. Television and radio antennas, including satellite dishes not exceeding a diameter of four feet, for personal use, accessory to a residential use, or to provide entertainment for a single business such as a restaurant.
- C. An antenna completely enclosed within an existing structure other than a communications tower, provided that the associated equipment or base transceiver station is located within an underground vault, or within an existing building or addition thereto, other than an equipment or base receiver shelter.
- D. An antenna located upon the roof of an existing building or structure other than a communications tower, provided that the antenna does not exceed a height of 12 feet, and provided that the equipment shelter is set back from the roof edge a distance equal to the height of the equipment shelter
- E. An antenna located on a water tower belonging to a public water supply utility, by permission of the water utility, not to exceed the height of the water tower by more than 12 feet, except that the Zoning Board of Appeals may by special permit increase the height of the antenna up to 20 feet where the location of the water tower and design of the antenna is such that it will not be visually intrusive upon the surrounding area.

- F. Antennas located on existing utility stanchions, not to exceed a height of 12 feet above the utility stanchions, located within a Commonwealth Electric Company easement, with permission of the landowner to location and maintenance of an equipment or base receiver station shelter, or submission of recorded easement language demonstrating the right to install an equipment or base receiver station for a wireless communication facility.

ARTICLE XI

Growth Management

[Added 7-19-2001 by Order No. 2001-118 ¹⁵]

§ 240-110. Authority.

This article is adopted under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, MGL Ch. 40A, Ch. 41 § 81L through 81GG, and Ch. 111.

§ 240-111. Purposes.

- A. The purpose of this article is to ensure that a harmonious pattern and predictable rate of development occurs in Barnstable, which protects the health, safety and welfare of current and future Barnstable residents. The consequences of the historical and current patterns and rates of development in Barnstable such as our historic inability to fund our capital needs and the further degradation of our environmental assets are described in the Local Comprehensive Plan. The rate of residential development in Barnstable is determined by and should not exceed the ability of the Town to provide adequate infrastructure and to protect the natural environment. In addition, this development rate is intended to further the legitimate commonwealth and local interests in the provision of a fair share of housing that is affordable to persons with both low and moderate incomes. This development rate will also guard against potential increases in the growth rate, which could adversely affect the Town's environmental resources, economy and land values.
- B. This article establishes a development rate adequate to ensure that the Town, with prudent reliance on local and other financial sources and in compliance with the revenue generating guidelines of Proposition 2 1/2, can and will provide infrastructure and operate in a manner which provides current and future Barnstable residents with an adequate and responsible level of Town services, as defined by relevant, commonly accepted professional standards. This article also establishes a development rate adequate to ensure that the Town has the ability to implement its affordable housing goals, as set

15. Note: The following Growth Management Ordinance is a DCPC (District of Critical Planning Concern) implementing regulation. The DCPC was approved by the Barnstable Assembly of Delegates on September 5, 2001; and the Cape Cod Commission gave its final approval on September 20, 2001. The Commission also approved this ordinance (originally approved by the Barnstable Town Council on July 19, 2001) as the implementing regulation on September 20, 2001. This implementing ordinance became a part of the Zoning Ordinance on September 21, 2001.

forth in the Barnstable Local Comprehensive Plan as updated by the Barnstable Affordable Housing Plan dated January 31, 2001.¹⁶

- C. It is anticipated by this article that during the time until buildout occurs, the Town will strive to upgrade its infrastructure to keep pace with its total population, as outlined in the Capital Improvements Plan and consistent with the growth rate established by this article. This includes the preparation of a long-term capital plan and a commitment to make contributions, as practical, to infrastructure and to the established Capital Trust Fund as appropriate to fund infrastructure, promote affordable housing and protect the environment.

§ 240-112. Definitions.

For the purposes of this Article X only, the following terms shall have the following meanings:

AFFORDABLE DWELLING UNIT — A residential dwelling unit:

- A. Subject to a valid Chapter 40B comprehensive permit and meeting the requirements of the Commonwealth's Department of Housing and Community Development (the "DHCD") to be counted as affordable in the state count toward the 10% goal, as that goal may be amended by the General Court (the "affordable goal"); or
- B. Otherwise meeting the affordability requirements of the DHCD as evidenced by receipt of a certificate of affordability, as defined below.

AFFORDABLE PERMIT — A building permit to construct an affordable dwelling unit.

BUILDING PERMIT — A permit to construct an affordable or market rate residential dwelling unit, issued pursuant to the State Building Code, state law and local ordinances and regulations. When a single structure is proposed to accommodate three or more residential dwelling units, the issuance of the first building permit shall authorize construction of the entire structure; however, only three dwelling units shall receive a certificate of occupancy per building permit issued.

CERTIFICATE OF AFFORDABILITY — A certificate issued by the Barnstable Office of Community Development authorizing an applicant to apply for a building permit to construct an affordable dwelling unit. A certificate shall issue for all units that meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.

CALENDAR YEAR — January 1 through December 31 of a given year.

DATE OF FILING — The date of the Building Department's date and time stamp on a fully completed application to construct a new residential dwelling unit.

MARKET PERMIT — A building permit to construct a market-rate residential dwelling unit.

PERSON — An individual, corporation, business trust, estate, trust, partnership, association, joint venture, two or more persons having a joint or common interest, or any legal entity.

16. Editor's Note: See Ch. 9, Affordable Housing.

RESIDENTIAL DWELLING UNIT — A single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. The term "residential dwelling unit" shall include assisted-living facilities as defined in MGL Ch. 19D, § 1 and independent living facilities, but shall not include family apartments, group homes and congregate facilities, hotels, motels and other uses that are not considered residential for purposes of zoning, as determined by the Town Attorney.

SUBSTANTIAL FINANCIAL INTEREST — A one-percent or greater legal or equitable interest. A person is deemed to have a substantial financial interest in an application for a building permit in which that person has a current, or had within the last 12 months a one-percent or greater legal or equitable interest in the real property that is the subject of the building permit application.

TOWN MANAGER — The Town Manager or his designee(s).

§ 240-113. Effective date and applicability.

- A. **Effective date.** The provisions of this article shall take effect upon the termination of the limited moratorium establishing a lottery system for the issuance of building permits, as established through the District of Critical Planning Concern nomination under the provisions of Sections 10 and 11 of the Cape Cod Commission Act.
- B. **Applicability.** This article applies to all new residential construction, including new structures and expansions, changes or alterations of existing structures that result in an increase in residential dwelling units, as that term is defined in § 240-112 above. It is intended that the cap established by this article shall apply to both market-rate units and affordable units. The development of additional dwelling units protected by MGL, Ch. 40A, § 6 shall be subject to the delays imposed by this growth management article; provided, however, this article is not intended to diminish the ability ultimately to construct a dwelling unit.

§ 240-114. Rate of residential development.

- A. **Affordable growth rate.** Subject to adjustments provided in this Article XI, the Building Commissioner shall issue building permits for construction of additional affordable dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 36 additional affordable dwelling units (the "annual affordable distribution"). In the event the Building Commissioner is required pursuant to a Chapter 40B comprehensive permit to issue affordable permit(s) in excess of the annual affordable distribution, or the Town Manager authorizes issuance of affordable permit(s) pursuant to a certificate of affordability in excess of the annual affordable distribution, future annual affordable distribution(s) shall be decreased by the same number, as necessary. In the event the Building Commissioner does not issue all of the affordable permits made available through an annual affordable distribution, as adjusted, the next calendar year annual affordable distribution shall be increased by the amount of remaining affordable permits.
- B. **Market growth rate.**

- (1) Subject to adjustments provided in this Article XI, the Building Commissioner shall issue building permits for construction of additional market rate residential dwelling units only if the aggregate of permits issued therefor will not result in authorizing construction, within each consecutive calendar year, of greater than 96 market permits (the "annual market distribution"). In the event the Building Commissioner is required to issue market permit(s) in excess of the annual market distribution pursuant to Subsection D, Adjustments, below, future annual market distribution(s) shall be decreased by the same number, as necessary.
- (2) In order to lessen the impact of this article at the time of its adoption, this article:
 - (a) Contains the following graduated scale for implementation of the target growth rate:

Graduated Annual Market Distribution Schedule

Year	Market Permits
2002	132
2003	126
2004	108
2005 and forward	96 = target annual market distribution

- (b) And provides a hardship exemption procedure (§ 240-117).
- (3) Transition year 2001. The following provisions shall remain in effect from the effective date of this article through December 31, 2001:
 - (a) The Building Commissioner shall issue building permits for construction of additional market-rate and affordable residential dwelling units only if the aggregate of permits issued will not result in authorizing construction, within the 2001 calendar year, of greater than 183 building permits.
 - (b) No person shall submit a building permit application within 10 days from the date of their last building permit application in which they have a substantial financial interest, and no person shall submit more than three building permit applications per month in which they have a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.
 - (c) During calendar year 2001 no person shall receive more than 30 building permits in which they have a substantial financial interest. Any person issued 30 or more building permits in calendar year 2001 permits in which they have a substantial financial interest shall, upon receipt of the 30th building permit, immediately withdraw all pending building permit application(s); said withdrawn application(s) may be resubmitted consistent with the terms of the preceding subsection.
- C. Chapter 40B permits. It is the intention of the Town to phase the development of all residential dwelling units constructed under the provisions of Chapter 40B. Within

Chapter 40B comprehensive permit developments, those units that are included in the DHCD tally of affordable units counted toward the affordable goal, as determined by the Town, shall apply for affordable permits. Those units that are not included in the DHCD count toward the affordable goal, as determined by the Town, shall apply for market permits.

D. Adjustments. The following activities shall result in the adjustment of annual affordable and market distributions, as the case may be:

- (1) Revocation and abandonment. Building permits issued on or after July 1, 2000, but revoked or subsequently abandoned under the provisions of the State Building Code shall be added to the next annual distribution. Building permits issued pursuant to this article shall be exercised in a continuous and expeditious manner. Construction shall commence within six months of issuance of a building permit; provided, however, that the Building Commissioner shall grant one six-month extension upon request.
- (2) Single lot protection. A building permit to construct a market-rate single-family dwelling unit on a lot in single ownership, to be owned and occupied by the owner of that parcel of land, applied for but not issued within 24 months from the date of filing shall be issued, and future annual market distributions shall be decreased by the same amount, if necessary.
- (3) Other required permits. Permits required to be issued under Chapter 40B or by a final court or administrative order shall be issued as required, and future annual affordable and/or market distributions, as the case may be, shall be decreased by the same amount, if necessary.
- (4) Borrowing against future distributions. In the event that no market permits are available to be issued in a given month, the Building Commissioner shall issue six market permits in that month and shall decrease subsequent annual market distribution(s) by the same number.

§ 240-115. Issuance of residential building permits.

A. The Building Commissioner shall issue building permits for construction of additional residential dwelling units only if permit issuance complies with the requirements of this section.

- (1) Building permits shall be issued on a monthly basis. Prior to issuing market permits within each month, the Building Commissioner shall determine the number of market permits remaining available within the annual market distribution and shall increase or decrease the number of available market permits consistent with any adjustments required by § 240-114D above. The Building Commissioner shall then divide the number of available market permits by the number of months remaining in the calendar year, which shall be the number of market permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.

- (2) Prior to issuing affordable permits within each month, the Building Commissioner shall determine the number of affordable permits remaining available within the annual affordable distribution and shall increase or decrease the number of available affordable permits consistent with any adjustments required by § 240-114A and D above. The Building Commissioner shall then divide the number of available affordable permits by the number of months remaining in the calendar year, which shall be the number of affordable permits issued within that month. Fractions shall be rounded down to the nearest whole number and added to subsequent monthly calculations.
 - (3) In the event that no affordable or market permits are available to be issued in a given month, only those permits requiring issuance or authorized for issuance pursuant to § 240-114A and D above shall be issued until any adjustments result in additional available permits or the next annual distribution becomes available.
- B. Limitations and transferability of building permits. The following restrictions shall apply to the submission of building permit applications and the issuance of building permits:
- (1) Within any calendar year, no person shall submit to the Building Department more than 20 building permit applications in which such application(s) that person has a substantial financial interest;
 - (2) No person shall submit a building permit application within 10 days from the date of their last building permit application in which that person has a substantial financial interest, and no person shall submit more than three building permit applications per month in which that person has a substantial financial interest. In a given month, no person or entity shall receive more than three building permits in which the person or entity has a substantial financial interest.
 - (3) During any calendar year no person shall receive more than 20 building permits in which that person has a substantial financial interest.
 - (4) Any applicant authorized to receive a building permit under this article may transfer said building permit to another lot owned by the same applicant. This provision shall not be deemed to extend the time period for exercising a building permit.
- C. Application and issuance of affordable permits.
- (1) In order to be deemed complete, applications for affordable permits shall include a valid certificate of affordability or shall include a copy of a valid Chapter 40B comprehensive permit providing that the unit constructed will meet the requirements of the DHCD to be counted as affordable in the state count toward the affordable goal.
 - (2) Affordable permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.

- D. Market permit issuance. Market permits shall be issued based upon the date of filing. Applications filed prior in time shall be issued a building permit prior to subsequently filed applications.

§ 240-116. Exemptions.

The following uses shall be exempt from the residential building permit limitations established by this article:

- A. Municipal uses;
- B. Affordable housing dwelling units created pursuant to Chapter 9, Affordable Housing, Article II, Accessory Apartments and Apartment Units, of the Code of the Town of Barnstable;
- C. Nonresidential development; and
- D. Reconstruction, extension, alteration, modification, and upgrade of an existing dwelling unit that does not result in the creation of a new residential dwelling unit.

§ 240-117. Hardship procedure.

The Town Manager shall establish a procedure for holding hearings and rendering decisions on whether to grant an exemption from the provisions of this article, in whole or in part, to relieve a substantial hardship, financial or otherwise.

§ 240-118. Determination of buildability.

The Town Manager shall establish a procedure for issuance of determinations of buildability to establish the residential development potential of a lot or lots. Such procedure shall include consultation with the Planning Board if such lot or lots are included in an approved subdivision or approval-not-required plan. Other boards and officials may be consulted to determine potential limitations on development.

§ 240-119. Violations and penalties.

Any person who knowingly violates the provisions of this article shall be prosecuted to the fullest extent of the law. Fraud and conspiracy in connection herewith shall remain separate offenses.

§ 240-120. Review of provisions.

The Town Council shall review this article within one year of adoption and every three years thereafter, and may review this article upon achieving its goal of supplying 10% affordable housing, to determine whether adjustments are necessary for the public health, safety or welfare.

§ 240-121. Scope and validity.

Nothing in this article shall nullify or exempt any property or use from any other provisions of this chapter or other Town regulations. The invalidity of any section or provision of this article shall not invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior to the determination of its invalidity.

§ 240-122. Severability.

If for any reason the proposed District of Critical Planning Concern nomination under consideration by the Barnstable County government fails, the provisions of this article shall become effective under the authority of the Home Rule Amendment, Article 89 of the Constitution of the Commonwealth, MGL Ch. 40A, and Ch. 41, § 81L through 81GG.

ARTICLE XII
Administration and Enforcement

§ 240-123. Enforcement; violations and penalties.

- A. **Enforcement.** This chapter shall be enforced by the Building Commissioner of the Town of Barnstable or his designee.
- B. **Violations.** For any violation of this chapter, the Building Commissioner or his designee may, where the situation requires, cause a criminal complaint to issue from the First District Court of Barnstable or may institute proceedings in Superior Court to enjoin the construction, alteration, enlargement, reconstruction or use of any building or the use of any premises in violation hereof, or further may institute proceedings to enjoin the construction, alteration, enlargement or reconstruction of any building which would result in a use in violation hereof.
- C. **Nonconflicting remedies.** The use of one of the remedies described in Subsection B above shall not preclude the use of the other remedy for the same violation or a continuing violation.
- D. **Verification required.** The Building Commissioner or his designee may require any plans, documents or sworn statements to be filed with his office to verify the intended use of a building or premises, or to establish the existence, nature or extent of a nonconformity alleged to exist or any other matter in which evidence is required.
- E. **Penalties.** Anyone convicted of a violation under this chapter shall be fined not more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

§ 240-124. Bonds and permits.

- A. **Performance bonds required.** A performance bond of not less than \$4 per foot of frontage against possible costs due to erosion or damage within passable street rights-of-way shall

be required by the Building Commissioner prior to authorization of any new building, and a bond or cash security may be required by the Building Commissioner for other construction, such bond or cash security to be held by the Town Treasurer until an occupancy permit is granted as provided for in Subsection B herein. Prior to the proceeding with construction above the foundation, a registered land surveyor shall certify that the structure has been located in compliance with all yard requirements.

- B. Occupancy permits. No premises and no building or structure erected, altered or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit signed by the Building Commissioner. Such permit shall not be issued until the premises, building or structure and its uses and accessory uses comply in all respects with this chapter.

§ 240-125. Zoning Board of Appeals.

- A. Establishment of the Board. The Zoning Board of Appeals established by Chapter 215 of the Acts of 1984, as amended by Chapter 295 of the Acts of 1984 and as may be further amended from time to time, is the Zoning Board of Appeals referred to herein.

- (1) Membership of the Board. The Zoning Board of Appeals shall consist of five members appointed by the Town Council of the Town of Barnstable.
- (2) Term of office. Members of the Zoning Board of Appeals shall be appointed for three-year terms so arranged that as nearly as possible 1/3 of the terms shall expire each year.
- (3) Associate Board members. The Town Council may appoint not more than six associate members for similar terms as provided in Subsection A(2).
- (4) Election of officers. The Zoning Board of Appeals shall elect a Chairman and clerk from its own membership each year.
- (5) Removal of members. Members may only be removed for cause by the Town Council after a hearing.
- (6) Vacancies. In case of a vacancy, inability to act, or interest on the part of a member of the Board, the Chairman of the Zoning Board of Appeals may designate a duly appointed associate member to act to fill the vacancy.

- B. General powers.

- (1) The Zoning Board of Appeals shall have the following powers:
 - (a) Appeals from administrative official. To hear and decide an appeal taken by any person aggrieved by reason of their inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Building Commissioner, or other administrative official in violation of any provision of Chapter 40A of the General Laws or of this chapter.

- (b) Special permits. To hear and decide applications for special permits for exceptions as provided for in Chapter 40A of the General Laws and in this chapter.
 - (c) Variances. To authorize upon appeal or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise.
 - (d) Other powers. To act as a Board of Appeals under the provisions of Chapter 41, § 81Y, 81Z, 81AA, and 81BB of the General Laws.
 - (e) Use variances. To authorize variances for uses in accordance with the provisions of this chapter; provided, however, that no such variances shall be granted within 300 feet of the major arteries known as Route 28, Route 132, Route 149 and West Main Street.
- (2) In exercise of the foregoing enumerated powers, the Zoning Board of Appeals shall take into consideration the same types of evidence as referred to in § 240-123D. **[Amended 11-2-1995 by Order No. 95-198]**
- C. Special permit provisions. The Zoning Board of Appeals may grant special permits only for uses specifically provided for as such in this chapter.
- (1) Public hearing required. The Zoning Board of Appeals shall, within 65 days after the filing of a special permit application with the Town Clerk or the Board, hold a public hearing on said application as per Chapter 808, Acts of 1975, as amended. Special permits shall not be issued until said public hearing is held.
 - (2) Standards for granting special permits. A decision of the Zoning Board of Appeals on an application for a special permit shall be based on the following:
 - (a) Whether or not the application falls within the category specifically excepted by this chapter.
 - (b) An evaluation of all the evidence presented at the public hearing by the petitioner and interested parties as it relates to the fulfillment of the spirit and intent of this chapter without substantial detriment to the public good or the neighborhood affected.
 - (c) A site plan has been reviewed and found approvable in accordance with Article IX herein subject only to the issuance of a special permit. **[Added 11-7-1987 by Art. 1]**

- (3) Period of validity. A special permit shall become void 12 months from the date of issue unless any construction work contemplated thereby shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the premises shall be open for business or in full use under said special permit.
- (4) Subsequent amendments. Construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance unless the use or construction is commenced within a period of not more than six months after the issuance of said permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

§ 240-126. Variance provisions. [Amended 10-7-1993 by Order No. 94-014]

The Zoning Board of Appeals may grant variances as provided for within this chapter and in accordance with MGL Ch. 40A, § 10, provided that, when an application for a variance proposes a development or activity which would require site plan review in accordance with § 240-100, the applicant should submit to the Zoning Board of Appeals a site plan which has been reviewed and found approvable in accordance with Article IX herein, subject only to the issuance of a variance.

ARTICLE XIII

Amendment; Definitions; Moratorium

§ 240-127. Zoning amendment procedures

All amendments to the Zoning Ordinance shall be in accordance with Massachusetts General Law, Chapter 40A, § 5.

§ 240-128. Definitions.

In the interpretation of this chapter, the following words and terms are to be used and interpreted as defined herein unless the context otherwise requires:

ACUTELY HAZARDOUS WASTE — As defined in MGL Ch. 21C. [Added 8-19-1993 by Order No. 93-105]

ADJOINING — When used to modify "lot" or "lots," shall mean that the said lots share a common boundary or property line for at least 20 continuous feet. [Added 11-2-1995 by Order No. 95-198]

ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, and other material, which are distinguished or characterized by their emphasis depicting, describing or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's

inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT MOTION-PICTURE THEATRE — An enclosed building used for presenting material, motion picture films, video cassettes, cable television, slides or any other such visual material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. **[Added 6-4-1998 by Order No. 98-064]**

ADULT PARAPHERNALIA STORE — An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT VIDEO STORES — An establishment having a substantial or significant portion of its stock-in-trade for sale or rent, movies, videos, and similar audio/visual media, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. For purposes of this definition, "substantial or significant portion of stock" shall mean greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

ADULT USE — As defined herein, an adult bookstore, adult paraphernalia store, adult motion-picture theatre establishment, or an establishment which displays live nudity, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31. Adult use shall include an establishment with a combination of adult use materials as listed above including books, magazines, devices, objects, tools, or toys, movies, videos, and any similar audio/visual media for sale or rent, which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL Ch. 272, § 31, which in combination, is either greater than 25% of the subject establishment's inventory stock or greater than 25% of subject premises' gross floor area, or 200 square feet, whichever is greater. **[Added 6-4-1998 by Order No. 98-064]**

AGRICULTURE AND RELATED USES — The adoption of this definition is explicitly intended to be a clarification of existing ordinances and is not intended to be a new restriction. **[Added 10-7-1999 by Order No. 99-160A]**

- A. For the purposes of § 240-8A(3), agriculture, horticulture, floriculture and viticulture on a parcel of land more than five acres subject to statutory exemption pursuant to MGL Ch 40A, § 3, shall be defined to mean what they mean under state statute.
- B. For the purposes of § 240-8DA(4), on a parcel of land five acres or less in size, the terms agriculture, horticulture, viticulture, aquaculture or floriculture shall not include:

- (1) The sale of products or plants grown elsewhere;
- (2) The storage of loam, mulch, gravel, and similar materials;
- (3) The storage of plants for installation, use or sale elsewhere;
- (4) The parking, storage or use of heavy equipment; and
- (5) The assembling of crews for the purpose of landscape construction and maintenance at off-site locations.

APARTMENT UNIT — That portion of the floor area of a multifamily dwelling designed for occupancy by a single family and containing one kitchen.

BED-AND-BREAKFAST — Tourist and guest accommodations located within an owner-occupied, single-family residential dwelling unit, let for compensation for brief periods of time, customarily less than two weeks long, without cooking facilities accessible to the guests; the temporary abode of visitors who have a permanent residence elsewhere. **[Added 2-20-1997]**

BOATHOUSE — A building used solely for the storage of boats and related equipment.

BUILDING HEIGHT — The vertical distance from the ground level to the plate.

DOCK or PIER — A combination of assembled materials that may be used as access to the water and extending below the reach of mean high water, including but not limited to, the following: **[Amended 2-1-2001]**

- A. Elevated open, pile-supported structure including gangways, floats, extensions, including ells and tees, dolphins, outhaul piles, and attendant pilings;
- B. Floating dock or pier; and
- C. Float, dock or pier installed for seasonal use, whether fixed or floating.

DWELLING, SINGLE-FAMILY — A detached residential building designed for and occupied by a single family.

DWELLING, TWO-FAMILY — A detached residential building designed for and occupied by two families.

ESTABLISHMENT WHICH DISPLAYS LIVE NUDITY — An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL Ch. 272, § 31.

FAMILY APARTMENT — A living unit, complete with kitchen and bath to supply a year-round residence for a family member.

FAMILY MEMBER — Any person who is related by blood or marriage.

FLOOR AREA, GROSS — The sum of all floor areas within a building or structure, measured from the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. It shall

include all areas capable of being used for human occupancy, including all basement floor area, mezzanine and attic space and enclosed porches. **[Amended 10-7-1993 by Order No. 94-016]**

HALF STORY — That space above the plate line but below the ridgeline in an area commonly called the "attic space," provided that the gross floor area of the half story shall not exceed 66% of the gross floor area immediately below the half story. **[Added 6-28-2001 by Order No. 2001-036]**

HAZARDOUS MATERIALS — As defined in Chapter 108, Hazardous Materials, of the Code of the Town of Barnstable. **[Added 8-19-1993 by Order No. 93-105]**

HAZARDOUS WASTE — As defined in MGL Ch. 21C. **[Added 8-19-1993 by Order No. 93-105]**

INTENSIFICATION OF USE — Any new construction, reconstruction, alteration, remodeling, repair, enlargement, change in use, increase in capacity, or addition of service resulting in greater off-street parking demand.

LOT — A single area of land in one ownership defined by metes and bounds or boundary lines, no portion of which is bisected by a street.

LOT COVERAGE — The term "maximum lot coverage as % of lot area" where used as a column heading in bulk regulations shall mean the maximum lot coverage by structures as a percent of lot area. **[10-4-1990 by Order No. 90-68]**

LOT WIDTH — The width of any lot shall be measured wholly within the lot at the building setback line along a straight line parallel to a line connecting the intersection of the front boundary with the lot side lines, except that an owner of land may establish his own setback line at a distance greater than that required, and the lot width may be determined at the setback line so established.

PERSONAL WIRELESS SERVICE FACILITIES — Facilities for personal wireless service including commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as defined by the Telecommunications Act of 1996. **[Added 6-3-1999 by Order No. 99-74A]**

RETAIL — The term "retail" shall not be construed to include "restaurant."

SETBACK — The distance between a street line and the front building line of a principal building or structure, projected to the side lines of the lot. Where a lot abuts on more than one street, front yard setbacks shall apply from all streets.

SHAPE FACTOR (LOT SHAPE FACTOR) — The numerical value resulting from:

- A. Division of the square of the perimeter in feet of a lot by the area in square feet thereof;
or
- B. Division of the square of the perimeter in feet of that portion of a lot intended as the site for building by the area in square feet thereof.¹⁷

¹⁷ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).

SIGN — See Article VII, § 240-59 et seq., herein.

SPECIMEN TREES — A native, introduced or naturalized tree which is sufficiently well grown to be an important visual element on a site. Any tree with a dbh of six inches or greater is eligible to be considered a specimen tree. Trees that have a small height at maturity, or are slow growing, such as a flowering dogwood or American holly with a dbh of four inches or larger, are eligible to be considered specimen trees. **[Amended 3-11-1999 by Order No. 99-056]**

STORY — That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above and having at least 1/2 its height above grade.

STRUCTURE — Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner, not including poles, fences and such minor incidental improvements.

TENT — A temporary shelter with a frame supporting a cloth or similar flexible covering, without a fixed location, foundation or permanent anchors. **[Added 2-22-1996 by Order No. 95-194]**

UPLAND — All lands not defined herein as wetlands.

VERY SMALL QUANTITY GENERATORS — Those operations that generate less than 26 gallons or 220 pounds of dry weight of hazardous waste per month and no acutely hazardous waste as defined in 310 CMR 30.00.

WETLANDS — The land under the ocean or under any bay, lake, pond, river, stream, creek or estuary; any wet meadows, marshes, swamps, bogs, areas where high groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrata for a plant community for at least five months of the year, lowland subject to any tidal action or annual storm flooding or flowage, or any flat, beach, dune or other shifting sand formation.

§ 240-129. Hyannis Downtown 500 Block Moratorium Zone. [Added 4-10-2003]

- A. No building permit, special permit, variance, or other permit may be issued under this chapter for the purposes of any exterior development of any building within the zone. This restriction shall not apply to the issuance of any permit, special permit, variance or other permit to allow the development of the interior of any structure now located within the zone. Notwithstanding the language in the first sentence of this subsection, a permit, special permit, variance or other permit may be issued for improvement of the exterior of existing buildings but under no circumstances for expansion beyond the present dimensions.
- B. The area defined as the "Hyannis Downtown 500 Block Moratorium Zone" consists of five parcels of land for a total of 7.59 acres and is bounded on the north by North Street, on the south by Main Street, on the east by High School Road Extension, and on the west by Bassett Lane. It is the remainder of the Hyannis B Zone subsequent to the rezoning of the surrounding areas within the past two years.
- C. During the time the moratorium is in effect the Planning Division and the Office of Community and Economic Development of the Town of Barnstable along with the

owners and/or developers of the properties within the zone shall determine the most feasible project scenario for the defined area using the Hyannis Downtown Market Based Development Strategy and other pertinent information and submit a Zoning Ordinance amendment to the Town Council for its consideration for alternative development uses of the defined area.

- D. Zoning amendments resulting from the aforementioned study process shall be deemed to be continuations of this moratorium and not new zoning amendments. Applications for permits submitted after the first publication of the notice of the public hearing, except for those relating to the exceptions set forth in Subsection A), which results in the adoption of this moratorium but before its effective date shall be dealt with in due course until the effective date of this moratorium, and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued subject to any reliance thereon being at the peril of the recipient. During the effective period of this moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit or other relief applied for after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.
- E. This section shall cease to be effective two years from its effective date.

ZONING

240 Attachment 1

Appendix

Zoning Map Revisions

The following table lists the amendments to the Zoning.
Refer to § 240-6.

Article/Item No.	Warrant or Adoption Date	Description
L3	5-7-1988 ATM	Rezoning a portion of the RD-1 southeast of Route 132, Assessor's Map Number 253, Parcels 16, 15 and 18, for a depth of 300 feet to HB Highway Business District
4	11-5-1988 STM	Designating a portion of the RB Zoning District located southerly of Route 28 between Old Strawberry Hill Road and the westerly property line of Barnstable Middle School for a depth of 300 feet to HB Highway Business District
5	11-4-1989 ATM	Adopted "Revised Groundwater Protection Overlay District Map," dated October 1989
9	11-4-1989 ATM	Designating Assessor's Map 272, Parcel 2, and Assessor's Map 251, Parcel 99, from RC-1 Residence C-1 District to RAH Residence AH District
11	11-4-1989 ATM	Designating a portion of the RD-1 Residence D-1 District located northerly along Route 28 for a depth of 300 feet, starting at Strawberry Hill Road and continuing easterly for 800 feet to the HB Highway Business District
L1	5-6-1989 ATM	Designating a portion of the existing R-C and RD-1 Residential Zoning Districts, northerly of Route 28 (Falmouth Road) at Phinney's Lane, shown as portions of Assessor's Map 209, Parcels 18 and 19, to HB Highway Business District
95-175	6-15-1995	Map passed
99-012	9-17-1998	Subsequent map passed

BARNSTABLE CODE

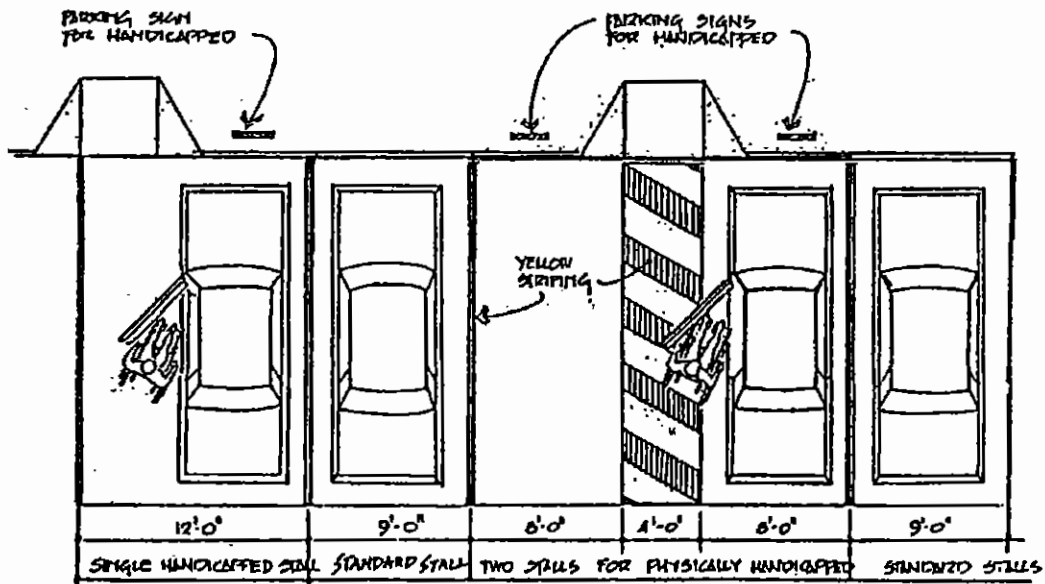
Article/Item No.	Warrant or Adoption Date	Description
2001-036	6-28-2001	B-1 Business District adopted as shown on the cover sheet map and Sheet 3 of 7 (Hyannis) entitled "Proposed amendment file copy date of February 1, 2001." The intent of the Town Council is to reserve its rights to act at a later date upon the other proposed zoning districts shown on a map.
2001-037, -038, -039	7-19-2001	MA-2, OR, O-1, O-2 and O-3 Districts adopted as shown on cover sheet map and Sheet 3 of 7
2001-117	8-16-2001	Redesignated a portion of the RF Residential District in Marstons Mills to the VB-A Village Business A District shown on the cover sheet and Sheet 6 of 7 (Marstons Mills) as shown on a map entitled "Proposed VB-A Zoning Change Requested by Vice President Gary C. Blazis," May 8, 2001, on file with the Town Clerk and specifically incorporated by reference
11-15-2001	2002-029	A new zoning district, the MA-1 Business District, shown on the cover sheet and sheet 3, entitled "proposed amendment file copy date of September 15, 2001"
9-19-2002	2003-008	Amendment of the boundary of the downtown zoning districts as shown on maps filed with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy," date May 1, 2002
4-15-2004	2004-075	Extend boundary of the MA-1 District as shown on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy" date March 31, 2004

ZONING

240 Attachment 2

Minimum Parking Lot Design Standards

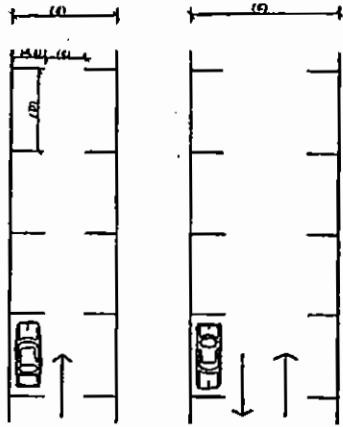
Handicapped Parking Dimensions



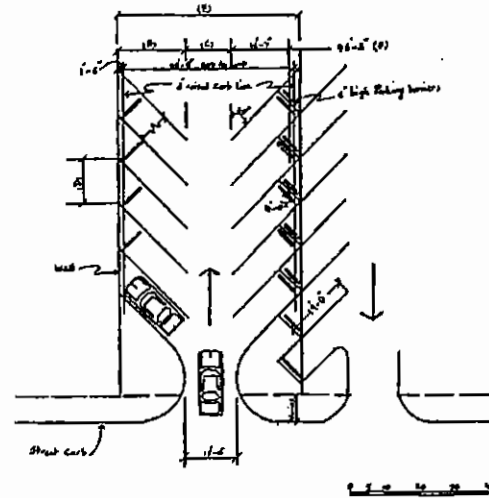
BARNSTABLE CODE

Minimum Parking Lot Design Standards

Parallel Parking Dimensions



45° Parking Dimensions



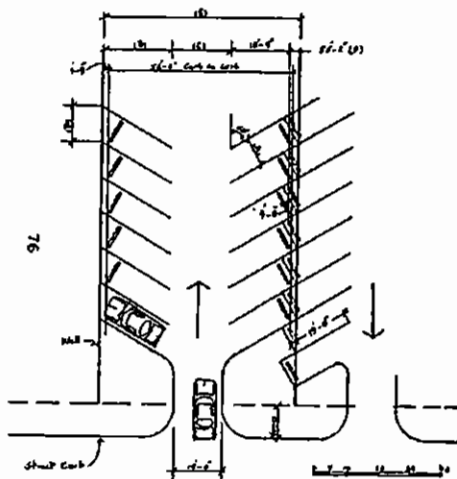
A	B	C	D	E
8'-0"	8'-0"	12'-0"	23'-0"	60'-0"/78'-0"
8'-6"	8'-6"	12'-0"	23'-0"	61'-0"/79'-0"
9'-0"	9'-0"	12'-0"	23'-0"	62'-0"/80'-0"
9'-6"	9'-6"	12'-0"	23'-0"	63'-0"/81'-0"
10'-0"	10'-0"	12'-0"	23'-0"	64'-0"/82'-0"

- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

A	B	C	D	E	F
8'-0"	16'-5"	15'-0"	15'-0"	52'-0"	48'-0"
8'-6"	16'-10"	15'-0"	15'-0"	52'-6"	48'-6"
9'-0"	16'-5"	15'-0"	15'-0"	53'-0"	49'-0"
9'-6"	16'-10"	15'-0"	15'-0"	53'-6"	49'-6"
10'-0"	16'-5"	15'-0"	15'-0"	54'-0"	50'-0"

ZONING

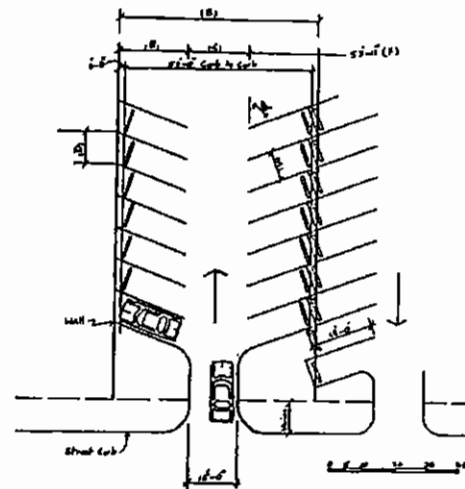
60° Parking Dimensions



A	B	C	D	E	F
8'-6"	26'-6"	18'-0"	9'-10"	58'-10"	35'-7"
9'-0"	27'-0"	18'-0"	10'-0"	59'-0"	36'-0"
9'-6"	27'-6"	18'-0"	10'-6"	59'-6"	36'-6"
10'-0"	28'-0"	18'-0"	11'-0"	60'-0"	37'-0"

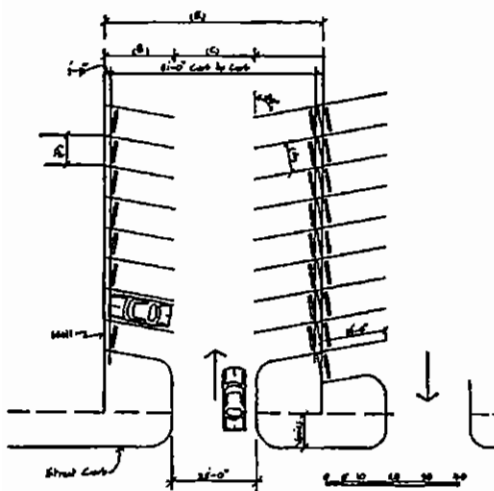
- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

70° Parking Dimensions



A	B	C	D	E	F
8'-6"	26'-6"	18'-0"	9'-10"	58'-10"	35'-7"
9'-0"	27'-0"	18'-0"	10'-0"	59'-0"	36'-0"
9'-6"	27'-6"	18'-0"	10'-6"	59'-6"	36'-6"
10'-0"	28'-0"	18'-0"	11'-0"	60'-0"	37'-0"

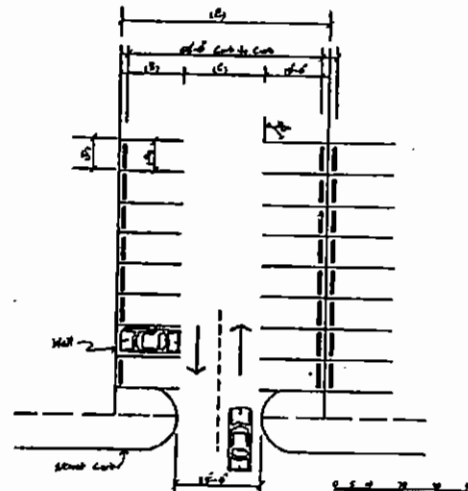
80° Parking Dimensions



A	B	C	D	E	F
8'-6"	26'-6"	18'-0"	9'-10"	58'-10"	35'-7"
9'-0"	27'-0"	18'-0"	10'-0"	59'-0"	36'-0"
9'-6"	27'-6"	18'-0"	10'-6"	59'-6"	36'-6"
10'-0"	28'-0"	18'-0"	11'-0"	60'-0"	37'-0"

- A Stall Width
- B Stall to Curb
- C Aisle Width
- D Car Curb Length
- E Wall to Wall
- F Overlap to Overlap

90° Parking Dimensions



A	B	C	D	E	F
8'-6"	26'-6"	18'-0"	9'-10"	58'-10"	35'-7"
9'-0"	27'-0"	18'-0"	10'-0"	59'-0"	36'-0"
9'-6"	27'-6"	18'-0"	10'-6"	59'-6"	36'-6"
10'-0"	28'-0"	18'-0"	11'-0"	60'-0"	37'-0"

PR

RPDME

RE

Information Request DTE-1-3

Please describe the location of the nearest drinking water wells and their distances to the project area.

Response

The nearest drinking water wells, and their distances to the project area, are set forth below:

BFD #2	approximately 2,000 feet
BWMD #1	approximately 4,000 feet
BWMD #2	approximately 4,000 feet
BWMD #3	approximately 3,150 feet
BWMD #4	approximately 2,700 feet

Please also see Attachment DTE-1-2(b), which shows the location of present and future wells in Barnstable.

Information Request DTE-1-4

Please describe the land uses adjacent to the entire project area.

Response

Please see Attachment DTE-1-4, which shows the location of adjacent land uses and describes each.

Information Request DTE-1-5

Please indicate how close the nearest residences are to the proposed project, and describe their locations. If any of these residences are visible on Exh. NSTAR-KFM-2, please describe their location with reference to that aerial photograph.

Response

Please see Attachment DTE-1-4 for the location of the nearest residences to the proposed project, which are located approximately 500⁺ feet to the north of the right-of-way. According to Mass GIS data, residential areas are located approximately:

- 500⁺ feet to the north of the proposed project
- 1,900⁺ feet to the west of the proposed project
- 3,000⁺ feet to the south of the proposed project
- 6,000⁺ feet to the east of the proposed project

The residences that are located approximately 500⁺ feet to the north of the proposed project are also shown on Exh. NSTAR-KFM-2.

Information Request DTE-1-6

Please refer to page 3 of NSTAR-KFM-1. Please explain the “negligible” visual impacts of the transmission line. As part of the response, discuss the visibility of existing lines and the proposed line from Route 6, and from abutting businesses.

Response

On page 3 of NSTAR-KFM-1, the term “negligible” was used to describe the “incremental” visual impact of the added line. This term was used as a qualitative measure that took into consideration the existing lines and structures on the ROW. Although the new structures may be visible to abutting businesses, because of the placement of the new structures near the middle of the ROW and between existing lines and structures of the same height, the additional visual impact should be small.

With regard to the visibility of existing lines and structures, they can be seen from Route 6 as well as from a number of abutting business properties.

Information Request DTE-1-7

Please refer to Exh. NSTAR-KFM-1, page 5.

- a. What does the Company consider “normal working hours” to be?
- b. What types of work might require off-hours work, and when would this work occur?
- c. Please characterize the noise that would be associated with any off-hours work. Would this noise be audible at any residences?
- d. Does Barnstable have any noise regulations? If so, please provide.

Response

- a. The Company considers construction during the morning and afternoon as “normal working hours”. Although the actual start and end times vary, one could expect a start in the 7:00 a.m. to 7:30 a.m. time period and conclusion on the order of 6:00 p.m.
- b. There may be several reasons why off-hours work is necessary. Among them can be schedule recovery following poor weather or other delays. In addition, scheduling construction to avoid traffic impacts can also lead to off-hours work. Because the construction for this project will be conducted on isolated rights-of-way, traffic conditions are not anticipated to affect the work schedule. There are no specific aspects of this project that would be expected to require off-hours activity.
- c. If off-hours work was required, it would be an extension of normal hours work, *i.e.*, truck movement and the use of small excavators, cranes and rigging. The noise would be that typical of such equipment. The noise should be very similar to the vehicular traffic on the nearby divided highway, Route 6, and the equipment activity in the lumber yard that sits astride the right-of-way. Given that the nearest residences are on the far side of Route 6, the construction sounds would be indistinguishable from the background.
- d. Barnstable’s noise regulation is provided as Attachment DTE-1-7. Because this regulation does not apply to construction-related activities and the operation of the project will have no perceptible noise impacts, this regulation is not applicable to the project.

Chapter 133

NOISE

§ 133-1. Responsibility for noise violations by person in charge of premises.

§ 133-2. Responsibility for noise violations by persons present on premises.

§ 133-3. Noise from motor vehicles.

§ 133-4. Notice of noise restrictions to be provided to renters.

§ 133-5. Violations and penalties.

[HISTORY: Adopted by the Town of Barnstable 11-5-1988, approved 3-10-1989 (Art. XXI of Ch. III of the General Ordinances as updated through 7-7-2003). Amendments noted where applicable.]

GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.
Peace and good order — See Ch. 147.

Rental property — See Ch. 170.
Noise at marinas — See Ch. 405.

§ 133-1. Responsibility for noise violations by person in charge of premises.

It shall be unlawful for any person or persons occupying or having charge of any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof in the Town, to cause or suffer to allow any unnecessary, loud, excessive or unusual noises in the operation of any radio, phonograph or other mechanical or electronic sound making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and boisterous singing by any person or group of persons or in the use of any device to amplify the aforesaid noise, where the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance from which it originates shall constitute prima facie evidence of a violation of this chapter.

§ 133-2. Responsibility for noise violations by persons present on premises.

It shall be unlawful for any person or persons being present in or about any building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof, other than that section of any establishment licensed under Chapter 138 of the General Laws, who, shall cause or suffer or countenance any loud, unnecessary, excessive or unusual noises, including any loud, unnecessary, excessive or unusual noises in the operation of any radio, phonograph, or other mechanical or electronic sound making device, or instrument or reproducing device or instrument or in the playing of any band, orchestra, musician or group of musicians, or the making of loud outcries, exclamations or other loud or boisterous noises or loud and

boisterous singing by any person or group of persons, or in the use of any device to amplify the aforesaid noise, where the aforesaid noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter, boat or conveyance in which or from which it is produced. The fact that the noise is plainly audible at a distance of 150 feet from the building, dwelling, structure, premises, shelter boat or conveyance from which it originates shall constitute prima facie evidence of a violation of this chapter. Any person shall be deemed in violation of this chapter, who shall make, or aid, or cause, or suffer, or countenance, or assist in the making of the aforesaid and described improper noises, disturbance, breach of the peace, and the presence of any person or persons in or about the building, dwelling, structure, premises, shelter, boat or conveyance or any part thereof during a violation of this chapter shall constitute prima facie evidence that they are a countenance to such violation.

§ 133-3. Noise from motor vehicles.

It shall be unlawful for any person while in control of any motor vehicle in the Town of Barnstable to cause any unnecessary, loud, excessive, or unusual noise in the operation of the motor vehicle. The fact that the noise is plainly audible at a distance of 150 feet from the motor vehicle from which it originates shall constitute prima facie evidence of a violation of this chapter.

§ 133-4. Notice of noise restrictions to be provided to renters.

The owner of any building, dwelling, structure, premises, shelter, boat or conveyance which is let, rented or leased shall provide any and all tenants, lessees and sublessees with a copy of this chapter.

§ 133-5. Violations and penalties.

Any person violating the provisions of this chapter shall be punished by a fine not to exceed \$200 for each offense.

Information Request DTE-1-8

Please refer to Exh. NSTAR-KFM, page 5. Did the company contact the Natural Heritage program to determine whether there are any estimated or potential habitats of protected species coincident with or adjacent to the proposed project site? If so, please provide copies of any correspondence.

Response

NSTAR Electric did not contact Natural Heritage and Endangered Species Program ("NHESP") regarding this proposed project. NHESP requires notification only when a project is located within a designated resource area. NSTAR Electric determined that the proposed project lies outside of applicable resources areas and, accordingly, no NHESP notification was required. In making this determination, the Company reviewed data from the Cape Cod Commission GIS and Mass GIS systems. The following resources areas were mapped (see Exh. NSTAR-KFM-2):

- Potential Vernal Pools
- Certified Vernal Pools
- Estimated Habitat – Mass GIS
- Potential Habitat – Mass GIS
- Estimated Habitat – Cape Cod Commission GIS
- Potential Habitat – Cape Cod Commission GIS

Information Request DTE-1-9

Please list all contained and bulk materials, for which Material Safety Data Sheets have been prepared (including solids, liquids, and gases), that would be brought onto the project site during construction.

Response

The following materials will be used during station construction and have Material Safety Data Sheets:

- Diesel Fuel & Gasoline for construction vehicles
- Hydraulic control fluid in construction vehicles
- Additives to concrete, form release agents
- Powders for exothermic connection of grounding conductors
- Sulfur Hexafluoride gas in circuit breakers – a total of four new 115kV circuit breakers will be installed at Barnstable Switching Station on this project.
- Insulating fluid in instrument transformers – the instrument transformers are small units designed to monitor line voltage and provide input to the monitoring and relaying system.

Information Request DTE-1-10

Please refer to page 6 of Exh. NSTAR-KFM. Will the project feature any containment for the transformers' insulating fluid at the Barnstable Switching Station?

Response

The referenced transformers are instrument transformers used to convert the high-voltage of the 115 kV lines and busses to a useable voltage for instrumentation and protection devices in the control house. These small units typically contain a total of 20-25 gallons of insulating fluid and, as such, the Company does not provide containment for them. This would apply to the existing devices at this station as well as the devices at other Company-owned substations.

Should the insulating fluid leak, the device would stop and an alarm will be transmitted to the Company's operations center, which is staffed 24 hours a day.

Information Request DTE-1-11

Please generally describe the directions that electricity currently flows along the 115 kV lines within the ROW between the Merchant's Way substation and connecting lines at the switching station, including during peak and off-peak conditions. Would these power flows change with the project, and if so, how?

Response

Currently, during peak or off-peak load conditions, the flows on the #120 (Canal to Barnstable), #122 (Bourne to Barnstable) and #115 (Mashpee to Barnstable) lines are toward Barnstable. The flow on the #118 (Barnstable to Harwich Tap), #119 (Barnstable to Harwich Tap) and #124 (Barnstable to Hyannis) lines is away from Barnstable for both peak and off-peak load conditions.

With the proposed project, the flow on the #118 line will decrease by approximately half the Nantucket load. Thus, in 2006, the peak load on the #118 line will decrease by about 18.3 MW. The flows on the remaining lines will not change as a result of the project.

Information Request DTE-1-12

Please provide estimates of any changes in electric or magnetic fields ("EMF") as a result of the project, including changes along the ROW and, as applicable, outside the ROW at the Barnstable switching station and the Merchant's Way substation fence lines affected by EMF changes, during both peak and off-peak conditions.

Response

The addition of the 115 kV Line to Nantucket has minimal effects on the EMF at the Barnstable Switching Station and along the right-of-way on either side of the Barnstable Switching Station since the new 115 kV Line essentially redistributes the existing power flow to Nantucket.

The Barnstable Switching Station 115 kV bus will be expanded to provide space for the new 115 kV Line. The magnetic field changes at the Barnstable Switching Station would be minimal because the total power flow through the switching station is unchanged. The electric fields would be increased slightly where the station bus has been expanded.

The addition of the 115 kV Line to Nantucket in the right-of-way west of the Barnstable switching station has a minimal effect on the EMF outside this right-of-way segment because the new 115 kV Line is located near the center of the right-of-way, the line phases are arranged in a vertical configuration, the line current is low in comparison to the existing 115 kV and 23 kV lines, and the power flow is in the opposite direction to the power flow of the other 115 kV Lines. The electric field at the edge of the right-of-way increases by 0.01 kV/meter and the magnetic field changes by less than 0.5 milligauss.

The magnetic fields on the north edge of the right-of-way east of the Barnstable Switching Station are reduced by 3 milligauss during peak loads and 1.5 milligauss during off-peak loads because the power flow is reduced on the 115 kV line on the north edge of the right-of-way. The electric fields are unchanged because the line voltages create these fields.

NSTAR Electric does not have any information on the EMF at the new Merchant's Way substation.

Information Request DTE-1-13

What approvals from ISO-NE or NEPOOL are required for this project? Which, if any, of these have been received and which are still pending? Please provide evidence of these approvals as they are available.

Response

The project was reviewed by the NEPOOL Transmission Task Force and NEPOOL Stability Task Force and requires approval from the NEPOOL Reliability Committee for both modification to the transmission system and cost allocation for such upgrades. Approval for changes to the transmission system, pursuant to Section I.3.9 of the ISO New England Transmission, Markets and Services Tariff ("ISO Tariff"), has been received from the Reliability Committee and a copy of the confirming letters are provided as Attachment DTE-1-13.

In addition, within the next two months, NSTAR Electric will submit a Transmission Cost Allocation Application pursuant to Schedule 12C of Section II of the ISO Tariff for determination that certain of the costs associated with the project are pool-supported PTF costs.



Stephen G. Whitley
Senior Vice President & Chief Operating Officer

March 10, 2005

Mr. Charles Salamone
Mr. Souren Tourian
NSTAR Electric & Gas Corp.
One NSTAR Way, SUMSE320
Westwood, MA 02090-9230

Subject: NSTAR-05-X01

Gentlemen:

ISO New England has determined pursuant to Section I.3.9 of the ISO New England Inc. Transmission, Markets and Service Tariff ("ISO Tariff") that implementation of the Participant's Proposed Plan identified in the following application will not have a significant adverse effect on the stability, reliability or operating characteristics of NSTAR Gas & Electric Company's (NSTAR) transmission facilities, the transmission facilities of another Transmission Owner, or the system of a Market Participant, subject to satisfaction of any conditions identified below with respect thereto:

NSTAR Gas & Electric Company (NSTAR) Transmission Facilities Proposed Plan Application NSTAR-05-X01 for installation of a NPCC Type III SPS at the Barnstable Substation, associated with the 2nd Nantucket Interconnection, which will trip the #118 Line, trip Mashpee load, and block Nantucket load transfer for loss of the #120/#122 double circuit tower (DCT), with an in service date of December 15, 2005, as detailed in Mr. Souren Tourian's February 22, 2005 transmittal to Mr. Richard W. Burke, Secretary - NEPOOL Reliability Committee.

The above Proposed Plan is hereby approved for implementation.

Sincerely,

Stephen G. Whitley
Senior Vice President and Chief Operating Officer

cc: Proposed Plan Application



Stephen G. Whitley
Senior Vice President & Chief Operating Officer

March 10, 2005

Mr. Charles Salamone
Mr. Souren Tourian
NSTAR Electric & Gas Corp.
One NSTAR Way, SUMSE320
Westwood, MA 02090-9230

Subject: NSTAR-05-T02

Gentlemen:

ISO New England has determined pursuant to Section I.3.9 of the ISO New England Inc. Transmission, Markets and Service Tariff ("ISO Tariff") that implementation of the Participant's Proposed Plan identified in the following application will not have a significant adverse effect on the stability, reliability or operating characteristics of NSTAR Gas & Electric Company's (NSTAR) transmission facilities, the transmission facilities of another Transmission Owner, or the system of a Market Participant, subject to satisfaction of any conditions identified below with respect thereto:

NSTAR Gas & Electric Company (NSTAR) Transmission Facilities Proposed Plan Application NSTAR-05-T02 for the upgrades associated with the 2nd Nantucket Interconnection Substations located on Cape Cod Massachusetts consisting of the construction of a new radial 115 kV supply line (200 feet underground and 3500 feet overhead utilizing size 795 MCM conductor) from National Grid's Merchants Way 115 kV Substation to the third bay at NSTAR's Barnstable 115 kV Substation, both located in Barnstable, Massachusetts; the expansion of the Barnstable 115 kV Substation with a 4th bay with two circuit breakers, the installation of two circuit breakers in the 3rd bay and the reconnecting of the existing 115 kV line from the 3rd bay to the 4th bay; the installation of a 30 MVAR capacitor bank at the Falmouth Tap 115 kV Substation; the installation of an 11 MVAR capacitor bank at the Orleans 115 kV Substation; and the installation of a 2nd 115 kV bus tie circuit breaker at the Bourne 115 kV Substation, with an in service date of December 15, 2005, as detailed in Mr. Souren Tourian's February 22, 2005 transmittal to Mr. Richard W. Burke, Secretary - NEPOOL Reliability Committee.

The above Proposed Plan is hereby approved for implementation.

Sincerely,

Stephen G. Whitley
Senior Vice President and Chief Operating Officer

cc: Proposed Plan Application

Information Request DTE-1-14

Please discuss how the project may affect the reliability of service to any other customers on Cape Cod.

Response

The reliability of service to other customers on the Cape Cod will improve due to the addition of the proposed Special Protection Scheme ("SPS"). The current transmission system serving the Cape has exposure to a highly unlikely contingency involving simultaneous loss of two of the three transmission lines supplying the Barnstable Switching Station. This event would currently result in loss of supply to both the #118 and #119 lines, thereby interrupting service to all customers (including those on Nantucket) served from these lines. Following implementation of the project, both lines will no longer need to be opened for this event. The SPS will interrupt only as many customers (including those on Nantucket) as are necessary to avoid overloading any transmission facilities.

The proposed design at the Barnstable Switching Station will provide an additional reliability improvement by eliminating the stuck-breaker contingency and the resulting simultaneous loss of the #115 and #122 lines. The #115 and #122 lines both serve a significant amount of load. Further, the reliability to the Hyannis load will be improved since the proposed expansion of the Barnstable Switching Station facilitates the addition of a 5th circuit breaker (the 5th breaker is a separate project), which will eliminate the possible simultaneous loss of both Hyannis transformers.

Information Request DTE-1-15

Will any electric outages be necessary during the construction, testing, or commissioning of the project? If so, please explain.

Response

No electric outages of service to customers will be necessary during the construction, testing, or commissioning of the project. Equipment outages will be required. However, the system is specifically designed to have sufficient redundancy to maintain service to customers during construction work. The equipment outages will be required to perform relocations of transmission entrances into the Barnstable Switching Station.

Information Request DTE-1-16

Please refer to the discussion of project alternatives in Exh. NSTAR-GRS-1, at 6.

- a. Please explain the present location of Line #115 and the position to which it would be temporarily relocated.
- b. How long would the construction outages last?
- c. What is the disadvantage to an overhead crossing of lines?

Response

- a. The existing 115 kV transmission, Line #115, is located approximately 100 feet off the southern side of the right-of-way between Merchants Way and the Barnstable Switching Station. There are two 23 kV distribution circuits between Line #115 and the southern edge of that right-of-way. In the proposed plan, this Line #115 would not be relocated except for the immediate approach to the Barnstable Switching Station. At that location, it would be shifted to the south to approach the new bus position that would be constructed in the station. In Alternative B, Line #115 would be temporarily relocated by constructing a wooden H-frame line in the middle of the right-of-way for the full distance from Merchants Way to the Barnstable Switching Station.
- b. Transmission line equipment outages would be taken for the time it took to reroute the wires entering the switching station or as a precaution while constructing new structures under or adjacent to the existing structures. In the case of the proposed plan, the total duration would be approximately two days.
- c. The disadvantage to an overhead crossing of lines is that the potential exists for one of the three-phase wires or the static wire to disconnect from the higher line and fall onto the lower line. This would create an electrical fault that would take both circuits out of service.

Information Request DTE-1-17

Please refer to Exhs. NSTAR-CPS-1 at 4 and NSTAR-GRS-4, at 28.

- a. Please explain the space and reliability considerations that preclude interconnecting the new Nantucket line by tapping directly into one of the existing NSTAR lines on the ROW adjacent to the planned Merchant's Way substation. Has NSTAR performed contingency analyses that establish the inadequacy of direct-tap options based on reliability criteria? Please describe.
- b. How did NSTAR determine that a temporary direct-tap connection would be viable until May 1, 2006? Would such a connection be capable of providing "firm service" for Nantucket until that date? Is it currently NSTAR's position that, if installed, such a connection may be disconnected after May 1, 2006 due to system operating concerns?

Response

- a. Tapping the existing lines (#120, #122 and #115) on the ROW adjacent to the planned Merchant's Way Substation was considered. The #120 line is a direct transmission line from the Canal Substation to the Barnstable Switching Station. This line is presently constructed for operation from the Canal Substation to Shoot Flying Hill Road and is operated at 115 kV. There are presently no taps on the #120 line and its capacity is reserved for future system requirements on the Cape. The #122 line is the most northern line on the ROW. There is not enough physical space to install the necessary equipment (circuit breaker, circuit switchers, etc.) on the northern edge of the ROW in order to tap the #122 line.

The #115 (Falmouth to Barnstable) and #107 (Bourne to Falmouth) lines presently supply the Otis, Falmouth, Martha's Vineyard, Hatchville and Mashpee loads. During peak load conditions, the contingency loss of the #107 line can result in low 115 kV voltages on the remaining #115 line. Adding additional load on the #115 line would exacerbate this condition, depressing 115 kV voltages to an unacceptably low level on the #115 line.

- b. A temporary direct-tap connection to the #115 line until May 1, 2006 is viable because peak loads on the Cape area occur after May 1. Direct-tapping of the #115 line would be problematic during peak load conditions. The Company is presently evaluating if "firm service" can be provided until May 1, 2006. It is NSTAR Electric's position that,

Commonwealth Electric Company
Department of Telecommunications and Energy
D.T.E. 05-1
Information Request: **DTE-1-17**
March 22, 2005
Person Responsible: Charles P. Salamone
Page 2 of 2

if a temporary interconnection, i.e., tapping the #115 line, is installed, it would be disconnected after May 1, 2006.

Information Request DTE-1-18

Please refer to Exh. NSTAR-GRS-4, at 7. Please describe the supply of power to Nantucket under the Line 119 contingencies, and the Nantucket load curtailments required under such contingencies.

Response

Presently, Nantucket load is supplied from the Lothrop Avenue Substation. This project will provide an alternate supply to Nantucket via the Merchant's Way Substation. The Lothrop Avenue Substation can, in turn, be supplied from either the #118 line or from the #119 line. Normally, the Lothrop Avenue Substation is supplied from the #118 line with the #119 line available as a backup supply.

The possible curtailment of Nantucket load can occur during peak load conditions if the Merchant's Way supply and the #118 line are both simultaneously unavailable. During this condition, the #119 line does not have adequate capacity to supply both the Cape area Harwich Substation load and the Nantucket load.

Information Request DTE-1-19

Please refer to Exhs. NSTAR-GRS-1, at 6 and NSTAR-GRS-4. Please clarify whether alternatives considered for the proposed project consisted of four alternatives, as show in Item 7 of the Facilities Study, or ten alternatives, as indicated in Mr. Sullivan's testimony.

Response

The "ten alternatives" in Mr. Sullivan's testimony was a characterization of the ten elements considered in the assessment of the interconnection between NSTAR Electric and New England Power Company (on behalf of Nantucket Electric). Four of the elements are the line alternatives 7A through 7D. The other elements included capacitor banks at Falmouth and Orleans, an additional breaker at Bourne, a special protective relaying installation at Barnstable, and potential reconductoring of a 115 kV circuit between Barnstable and Harwich and between Barnstable and Hyannis. During the course of the assessment, the reductorings were determined not to be necessary. The four line alternatives were then the subject of the detailed evaluation.

Information Request DTE-1-20

Please refer to Exh. NSTAR-GRS-4, at 10, 19, 21. Please explain more fully the difference between items 7A, 7B (not revised), 7C, and 7D at Barnstable Switching Station, and clarify how the contingency of a stuck circuit breaker results in unacceptable conditions with use of items 7A, 7B, and 7C, but not with use of item 7D.

Response

The alternatives differ, in some circumstances, in the nature of the line work and, in others, by the manner in which the lines are connected to the switching station.

7A: Line: converts one of the existing 23 kV distribution pole lines into a structure that supports 23 kV as well as a 115 kV circuit.

Station: the new 115 kV line enters a new 4th bay at Barnstable Switching Station

7B: Line: installs a temporary 115 kV line in the middle of the right-of-way and connects the existing Line #115 to it, while the structures of the existing Line #115 are rebuilt from Merchants Way to Barnstable Switching Station into a double circuit tower line. Then, the temporary line is removed and Line #115 and the Merchants Way line are connected on this double-circuit tower.

Station: the new circuit enters a new 4th bay at Barnstable Switching Station.

7C: Line: installs a new double-circuit tower line in the middle of the right-of-way and makes an overhead connection from the Merchants Way Substation to the double-circuit tower line.

Station: installs a new 4th bay with two 115 kV circuit breakers and adds a breaker in the 3rd bay at Barnstable Switching Station. The Merchants Way circuit goes into the 3rd bay and Line #115 is relocated into the 4th bay from the 3rd bay. Please note that the diagram on page 20 of Exhibit NSTAR-GRS-4 (the draft Facilities Study) correctly described this alternative, but the text on page 19 in Section 7.C.1.0 contains an error with regard to identifying where the Merchant's Way connection is with respect to the Barnstable Switching Station.

7D: Line: installs a new double-circuit tower line in the middle of the right-of-way and makes an underground connection from Merchants Way to that tower line.

Station: installs a new 4th bay with two 115 kV circuit breakers and adds two 115 kV circuit breakers in the 3rd bay at Barnstable Switching Station. The

Merchants Way circuit goes into the 3rd bay and Line #115 is relocated into the 4th bay from the 3rd bay.

Line alternatives 7A, 7B and 7C are substantially different. All three result in double-circuit tower lines, but where they are and what has to be removed or changed in order to accommodate them is different. The differences in the substation elements of the alternatives are demonstrated by the impact of an electrical fault followed by a stuck breaker event.

- 7A: referring to Figure 1 in Exhibit NSTAR-GRS-4, a fault on Line #122 with a stuck breaker on breaker 182 would result in the loss of the #122 and #115 lines. The #120 line will then be supplying the entire Cape-area load. During peak load conditions, this would result in severe low voltage on the Cape and the inability to provide the firm service to Nantucket.
- 7B: the affected elements and consequences are the same as for 7A.
- 7C: a fault on the new line to Merchant's Way Substation and a stuck breaker of the single circuit breaker in the 3rd bay would result in the opening of all circuit breakers at the Barnstable Switching Station (except for breakers 282 and 582, which would remain closed). This would result in a segmentation of the Cape-area loads and would be an unacceptable design of the Barnstable Switching Station.
- 7D: with the addition of the 4th breaker, the stuck breaker fault condition described above would result only in the outage of one supply line to the Cape area. As a result, two 115 kV supply lines to Barnstable Switching Station would be retained (lines #115 and #120) and firm service to Nantucket could continue.

Information Request DTE-1-21

Please refer to Exh. NSTAR-GRS-2(a). Please discuss the reasons for the following elements of the configuration and location of the proposed double-circuit tower ("DCT") facility, which would carry the proposed line:

- a. Why the configuration provides space for a future line on the north side of the DCT structures, rather than addressing future line requirements at a later time, when the need arises.
- b. Why the configuration incorporates a separation of 90 feet between the proposed DCT structures and the existing DCT structure, rather than a smaller separation.
- c. Why the configuration incorporates a DCT design, rather than two parallel, single circuits.

Response

- a. The configuration provides space for a future line on the north side of the DCT structures for two reasons. Prior to the development of the Nantucket interconnection concept, there was sufficient space for up to two additional and independent tower lines on the right-of-way for NSTAR Electric development purposes. With the advent of the Nantucket interconnection, if some of that space was occupied by a single-circuit stand-alone structure, it would limit the potential future development of the right-of-way. It would hinder future development because of the physical blockage and because, once built, it would be a functioning part of the system and its removal to construct a double-circuit structure would be problematic.

By taking this opportunity to site the Nantucket connection on a double-circuit tower line, space is provided to enable that future development of the right-of-way without the necessity for an extended line outage during future construction. In the proposal, double-circuit structures would be erected, but no cross arms, insulators or line hardware for any future line would be included. The only concessions to the potential for a future line are in the strength of the steel and the height of the structures, which remain well within the height shadow of the adjacent double-circuit tower line.

- b. The proposed tower line is situated so that the capability for a future tower line remains an available option. Locating the tower line as proposed also takes advantage of the north to south slope of the right-of-way, reducing its height above sea level, making it less visible and less of an obstacle.

- c. As mentioned in a. above, two single circuits would limit future development to one circuit beyond the Nantucket interconnection.

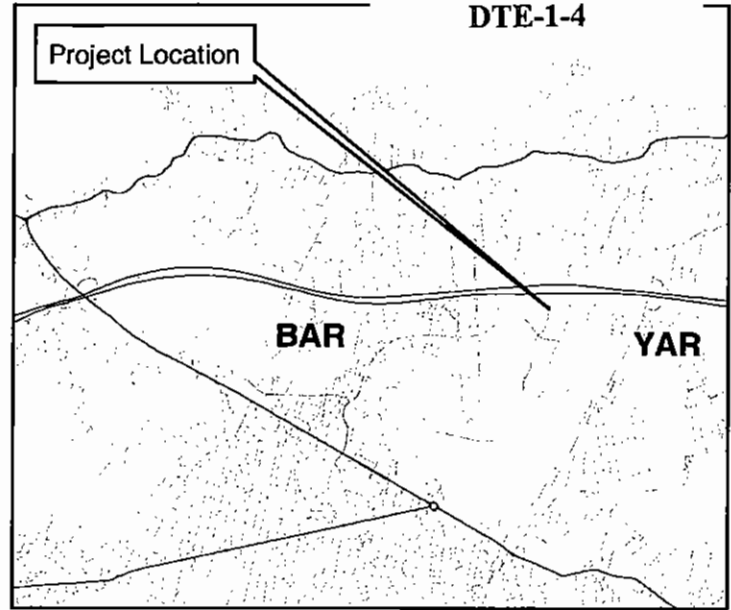
Information Request DTE-1-22

Please describe the precautions that the Company will take regarding site security during construction, including measures to prevent the public from accessing any construction areas.

Response

The underground portion of the proposed line will require approximately 200 feet of trench. With the sandy conditions in this location, it is anticipated that this could be excavated and restored in only a few days, so exposure to this part of the construction would be minimal and would be concurrent with activities within the adjacent Merchant's Way substation. The Barnstable Switching Station activities would be conducted within the station's fenced area.

Access to the right-of-way is from gated roads at each end and at the lumber yard and construction company. These gates are locked at night. The excavations for caisson foundations along the right-of-way would be plated over night to prevent access.



1 inch equals 400 feet

400 200 0 400 Feet

LEGEND

Code	Category	Definition
3	Forest	Forest
5	Mining	Sand; gravel & rock
13	Residential	Larger than 1/2 acre lots
16	Industrial	Light & heavy industry
17	Urban Open	Parks; cemeteries; public & institutional greenspace; also vacant undeveloped land
18	Transportation	Airports; docks; divided highway; freight; storage; railroads
24	Powerlines	Powerlines
31	Urban public	no description



NSTAR Electric
One NSTAR Way
Westwood, MA 02090

National Grid Nantucket Line Tie In
to NSTAR Barnstable Switching Station

Drawing: Orthophoto with Land Use Overlay

Data Source:

1. Office of Geographic and Environmental Information (Mass GIS), Commonwealth of Massachusetts Executive Office of Environmental Affairs
2. Cape Cod Commission GIS

Date: November 23, 2004

